

PART 3
OF THE
AUGUST 1, 1996
ADMINISTRATIVE REGISTER

Due to the size of the August 1, 1996, Administrative Register, it could not be stapled as one document, but is included in three separate stapled documents. This section is Part 3 of the August 1, 1996 Administrative Register.

the effective date that the facility becomes subject to the provisions of 401 KAR 34:280 or 35:280, an implementation schedule as specified in Section 4(1)(b) of 401 KAR 34:275.

(3) Where an owner or operator applies for permission to use a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system and chooses to use test data to determine the organic removal efficiency or the total organic compound concentration achieved by the control device, a performance test plan as specified in Section 6(2)(c) of 401 KAR 34:275.

(4) Documentation that demonstrates compliance with the equipment standards in Sections 3 to 10 of 401 KAR 34:280. This documentation shall contain the records required under Section 15 of 401 KAR 34:280. The cabinet may request further documentation before deciding if compliance has been demonstrated.

(5) Documentation to demonstrate compliance with Section 10 of 401 KAR 34:280 shall include the following information:

(a) A list of all information references and sources used in preparing the documentation.

(b) Records, including the dates, of each compliance test required by Section 4(10) of 401 KAR 34:275.

(c) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "ATPI Course 415: Control of Gaseous Emissions" or other engineering texts acceptable to the cabinet that present basic control device design information. The design analysis shall address the vent stream characteristics and control device operation parameters as specified in Section 6(2)(d)3 of 401 KAR 34:275.

(d) A statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur.

(e) A statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of ninety-five (95) weight percent or greater.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal

opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed amendments affect owners and operators of hazardous waste facilities that have certain equipment, as specified in the regulation.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First Year: There will be no direct or indirect costs or savings.

2. Continuing costs or savings: There will be no continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs.

b. Reporting and paperwork requirements: There are no additional paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants are to be used for the implementation and enforcement of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were not considered. These changes are consistent with federal standards.

8. Assessment of expected benefits of the administrative regulation: These amendments provide consistency with current federal standards.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: There will be no effects on public health or the environment without the implementation of this administrative regulation.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are

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no statutes, policies, or regulations that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Yes, tiering was used. This administrative regulation applies to owners and operators of hazardous waste facilities that have certain equipment. Tiering is applied to all of Kentucky's waste regulations, based on type and quantity of waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments adopt changes that applies to hazardous waste equipment. These changes are necessary to maintain consistency between state and federal programs. In addition, the regulation has been modified to reflect the requirements of regulation construction specified in KRS 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: No applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that manages hazardous waste facilities that have certain equipment, as specified in the regulation.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the Cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (Amendment)

401 KAR 38:500. Provisions for approval by the local government or the Kentucky Regional Integrated Treatment and Disposal Facility Siting Board.

RELATES TO: KRS 224.10, 224.40, 224.43, 224.46, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520

NECESSITY AND FUNCTION: KRS 224.40-305 and 224.46-520

require any person who treats, stores, recycles, or disposes of hazardous waste to first obtain a hazardous waste site or facility permit from the cabinet. KRS 224.46-810 through 224.870, 224.40-310 and 224.46-520(1) require that the cabinet may not issue a permit to a regional integrated waste treatment and disposal demonstration facility without approval by the Kentucky Regional Integrated Waste Treatment and Disposal Facility Siting Board. KRS 225.40-310(5) and (6) and 224.46-520(1) require that the cabinet may not issue a permit to any hazardous waste disposal facility, except for a regional integrated waste treatment and disposal facility, without approval from the local government. This administrative regulation establishes the permitting process for hazardous waste sites or facilities. This administrative regulation establishes provisions for approval by either the local government or the Kentucky Regional Integrated Waste Treatment and Disposal Facility Siting Board prior to obtaining a permit for a hazardous waste disposal site or facility from the cabinet.

Section 1. Definitions of Terms Used in this Administrative Regulation. The definitions previously found in this section have been relocated to the definition administrative regulation for this chapter, which is 401 KAR 38:005. [Unless otherwise specifically defined in KRS 224.46-810(1) and 401 KAR 30:010 or otherwise clearly indicated by their context, terms in KRS Chapter 224 and in this administrative regulation shall have the meanings given in this section.

~~(1) "Board" means the Kentucky Regional Integrated Waste Treatment and Disposal Facility Siting Board (KRS 224.2201(1)).~~

~~(2) "Local government" means the fiscal court of the county, urban county government, or governing body of an incorporated municipality wherein a hazardous waste landfill or other site or facility for the land disposal of hazardous waste is proposed.~~

~~(3) "Other site or facility for the land disposal of hazardous waste" means a disposal facility as defined in 401 KAR 30:010, Section 1 but shall not include a storage facility or a treatment facility as defined in 401 KAR 30:010.]~~

Section 2. Applicability. (1) This administrative regulation applies to owners and operators of new or proposed hazardous waste landfills, incinerators, or other sites or facilities for the land disposal of hazardous waste.

(2) This administrative regulation applies to owners and operators of existing hazardous waste landfills, incinerators, or other sites or facilities for the land disposal of hazardous waste who request a permit modification which does not meet the criteria of a minor modification as defined in Section 3 of 401 KAR 38:040. For permit modifications which are not minor modifications, approval of the local government or board shall only concern those conditions to be included in the permit modification, in accordance with Section 2(3) of 401 KAR 38:050.

(3) This administrative regulation applies to owners and operators

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of new and existing hazardous waste treatment facilities (as defined in Section 1 of 401 KAR 38:005 ~~[30:010]~~) and hazardous waste storage facilities (as defined in Section 1 of 401 KAR 38:005 ~~[30:010]~~) who request a permit modification to include a disposal facility (as defined in Section 1 of 401 KAR 38:005 ~~[30:010]~~) instead of or in addition to any permitted hazardous waste activity already conducted by the owner or operator.

Section 3. Local Government Approval. The cabinet shall not issue a permit in accordance with this chapter, to construct or operate a hazardous waste site or facility which meets the requirements of Section 2 of this administrative regulation, unless:

- (1) The cabinet has received written approval from the local government in accordance with KRS 224.855(6); or
- (2) The hazardous waste site or facility is not subject to KRS 224.40-310(6) in accordance with KRS 224.40-310(7).

Section 4. Board Approval. The cabinet shall not issue a permit in accordance with this chapter, to construct or operate a hazardous waste site or facility which meets the definition of a regional integrated waste treatment and disposal demonstration facility in KRS 224.46-46-810(4), unless the board issues a Certificate of Environmental Safety and Public Necessity in accordance with KRS 224.46-830.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed amend-

ments affect all owners and operators of hazardous waste sites.

2. Direct and indirect costs or savings on the affected entities:

- a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

- b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

- c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

- a. Direct and indirect costs or savings:

1. First Year: Not applicable.

2. Continuing costs or savings: Not applicable.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs.

- b. Reporting and paperwork requirements: There are no additional paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants are to be used for the implementation and enforcement of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

- a. Geographical area in which administrative regulation will be implemented: No public comments were received.

- b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were not considered. These changes are consistent with federal standards.

8. Assessment of expected benefits of the administrative regulation: These amendments comply with the regulation drafting requirements of KRS 13A.222.

- 9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: There will be no effects on public health or the environment without the implementation of this regulation.

- b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

- c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, policies, or regulations that conflict, overlap, or duplicate this regulation.

- a. Necessity of proposed regulation if in conflict: Not applicable.

- b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Yes, tiering was applied. This administrative regulation applies to owners and operators of hazardous waste facilities, in compliance with KRS 13A.224. Tiering is applied to all of Kentucky's waste regulations, based on type and quantity of waste generated and managed and type of management activities performed by the owner or operator.

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FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: This regulation has been amended to comply with regulation format requirements of KRS 13A.222.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that manages hazardous waste sites.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the Cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (Amendment)

401 KAR 39:080. Recycling and universal waste fees.

RELATES TO: KRS 224.10, 224.46

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-550

NECESSITY AND FUNCTION: KRS 224.10-100(20) states that the cabinet may provide by administrative regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.46-550 requires the

cabinet to promulgate administrative regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. The purpose of this chapter is to establish a fee schedule for hazardous waste management. This administrative regulation establishes the fee schedule for permits for recyclers of hazardous waste and petitions to include additional wastes under 401 KAR Chapter 43.

Section 1. Applicability. (1) This administrative regulation applies to all persons considered to be recyclers in accordance with the criteria contained in Section 1 of 401 KAR 35:010 and 401 KAR Chapter 36.

(2) This administrative regulation applies to all persons who petition the cabinet to include additional wastes as a universal waste under 401 KAR Chapter 43.

Section 2. Schedule of Fees for Recycling. (1) An annual fee shall be required in order to register as a recycler of hazardous wastes. The fee to register as a hazardous waste recycler is \$300. Generators who generate less than 100 kg of hazardous waste in a calendar month (i.e., conditionally exempt small [limited] quantity generators) shall be exempt from the registration fee for recycling activities.

(2) No fee is charged if a registrant modifies his registration by making a name change. If a registrant submits a registration to modify any other information, a fee of fifty (50) dollars shall apply.

Section 3. Fees for Universal Waste Petitions. Any person seeking to add a hazardous waste or a category of hazardous waste to 401 KAR Chapter 43 shall submit a \$2,500 fee with the petition required in 401 KAR 43:070.

Section 4. Submittal of Fees. The required fees shall be submitted to the cabinet with the permit application. All checks shall be made payable to the Kentucky State Treasurer.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a

interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed amendments affect persons who recycle hazardous waste, and wish to petition the Cabinet to include additional wastes as a universal waste

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First Year: There will be a slight increase in costs to the Cabinet as petitions to include additional wastes as a universal waste will have to be administratively reviewed.

2. Continuing costs or savings: The costs mentioned in item #1. above will continue.

3. Additional factors increasing or decreasing costs: There should not be any additional factors effecting costs.

b. Reporting and paperwork requirements: There will be a slight increase in additional paperwork requirements as petitions to include additional wastes as a universal waste will have to be administratively reviewed.

4. Assessment of anticipated effect on state and local revenues: The \$2,500 fee for persons who petition the Cabinet to include additional wastes as a universal waste will increase state revenues. There are no anticipated effects on local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants will also be used for the implementation and enforcement of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were not considered. These changes provide consistency with other hazardous waste regulations.

8. Assessment of expected benefits of the administrative regulation: These amendments provide consistency with federal hazardous waste regulations.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: The implementation of this regulation will not affect public health and environmental welfare.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, policies, or regulations that conflict, duplicate, or overlap this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Yes, tiering was used. This administrative regulation applies to recyclers of hazardous waste, and persons wishing to petition the Cabinet to include additional wastes as a universal waste. Tiering is applied to all of Kentucky's waste regulations, based on type and quantity of waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments adopt changes that apply to recyclers of hazardous waste, and persons who wish to petition the Cabinet to include additional wastes as a universal waste. These changes are necessary to maintain consistency between state and federal programs. The addition clarifies the applicability of the standards. In addition, the regulation has been modified to reflect the requirements of regulation construction specified in KRS 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: There is no federal mandate for this administrative regulation.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that recycles hazardous waste, and wishes to petition the Cabinet to include additional wastes as a universal waste.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the Cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be

determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)**

401 KAR 39:110. ~~[Marketer and burner]~~ Registration fees.

RELATES TO: KRS 224.10, 224.46, 224.99, 401 KAR Chapters 43, 44, 40 CFR Parts 273, 279

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-550

NECESSITY AND FUNCTION: KRS 224.10-100(20) states that the cabinet may provide by administrative regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.46-550 requires the cabinet to promulgate administrative regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. The purpose of this chapter is to establish a fee schedule for hazardous waste management. This administrative regulation establishes annual fees for ~~[the] registration [of marketers and burners of hazardous waste fuel or used oil burned for energy recovery].~~

Section 1. Applicability. This administrative regulation applies to marketers or burners of hazardous waste fuel or used oil burned for energy recovery in accordance with the criteria established in 401 KAR 36:020; large quantity handlers of universal waste as established in 401 KAR 43:030; used oil processors, refiners, burners, and marketers as established in 401 KAR 44:050 through 44:070; and generators who treat hazardous waste on site in accordance with the criteria contained in Section 6 of 401 KAR 32:030. ~~[36:040 and 401 KAR 36:050.]~~

Section 2. Annual Registration and Schedule of Fees. (1) Marketers and burners of hazardous waste fuel ~~[or used oil]~~ burned for energy recovery shall register annually with the cabinet. The fee to register as a marketer or burner is \$300.

(2) Large quantity handlers of universal waste shall obtain a EPA identification number from the cabinet. The fee to register as a large quantity handler is \$300.

(3) Used oil processors, refiners, burners, and marketers shall obtain a EPA identification number from the cabinet. The fee to register as a used oil processor, refiner, burner, or marketer is \$300.

(4) Generators who treat hazardous waste on site shall register annually with the cabinet. The fee to register as a generator who treats hazardous wastes on site is \$300. Generators who generate less than 100 kilograms of hazardous waste in a calendar month (that is, a limited quantity generators) shall be exempt from the registration fee.

(5) No fee is charged if a registrant modifies his registration by making a name change. If a registrant submits a registration to modify any other information, a fee of fifty (50) dollars shall apply.

Section 3. Submittal of Fees. The required fees shall be submitted to the cabinet with the registration form. All checks shall be made

payable to the Kentucky State Treasurer.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed amendments affect persons who are large quantity handlers of universal waste; and used oil processors, refiners, burners, and marketers.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First Year: There will be a slight increase in costs, as persons who are large quantity handlers of universal waste; and used oil

processors, refiners, burners, and marketers will have to register with the Cabinet.

2. Continuing costs or savings: The costs mentioned in item #1. above will continue.

3. Additional factors increasing or decreasing costs: There should not be any additional factors effecting costs.

b. Reporting and paperwork requirements: There will be a slight increase in additional paperwork requirements as persons who are large quantity handlers of universal waste; and used oil processors, refiners, burners, and marketers will have to register with the Cabinet.

4. Assessment of anticipated effect on state and local revenues: The registration fees for persons who are large quantity handlers of universal waste; and used oil processors, refiners, burners, and marketers will increase state revenues. There are no anticipated effects on local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants will be used for the implementation and enforcement of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were not considered. These changes provide consistency with other hazardous waste regulations.

8. Assessment of expected benefits of the administrative regulation: These amendments provide consistency with other hazardous waste regulations.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: The implementation of this regulation will not affect public health and environmental welfare.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, policies, or regulations that conflict, duplicate, or overlap this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Yes, tiering was used. This administrative regulation applies to persons who are large quantity handlers of universal waste; and used oil processors, refiners, burners, and marketers. Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments adopt changes that apply to large quantity handlers of universal waste; and used oil processors, refiners, burners, and marketers. These changes are necessary to maintain consistency between state and federal

programs. The addition clarifies the applicability of the standards. In addition, the regulation has been modified to reflect the requirements of regulation construction specified in KRS 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: There is no federal mandate for this administrative regulation.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local offices of government that are large quantity handlers of universal waste; and any that are used oil processors, refiners, burners, and marketers.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the Cabinet establish a comprehensive program for the proper management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (Amendment)

401 KAR 39:120. [Part A] Application fees.

RELATES TO: KRS 224.10, 224.46, 224.99, 401 KAR 38:070

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-550

NECESSITY AND FUNCTION: KRS 224.10-100(20) states that the Natural Resources and Environmental Protection Cabinet may provide by administrative regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.46-550 requires the cabinet to promulgate administrative regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. The purpose of this chapter is to establish a fee schedule for hazardous waste management. This administrative regulation establishes the fee schedule for ~~submitting Part A of the application for~~ storage,

treatment or disposal facility permits.

Section 1. Applicability. (1) This administrative regulation applies to all treatment, storage, or disposal facilities required by 401 KAR Chapter 38 ~~[Section 2(1) of 401 KAR 38:070]~~ to submit an ~~[Part A of the]~~ application for a hazardous waste site or facility permit.

(2) The provisions of this administrative regulation shall apply to all [Part A] applications for hazardous waste site or facility permits submitted on or after the effective date of this administrative regulation, and to such applications which are not complete, as determined by the cabinet, by the effective date of this administrative regulation. ~~[Part A applications for hazardous waste site or facility permits which are complete, as determined by the cabinet, by the effective date of this administrative regulation, shall be subject to this administrative regulation as in effect on October 26, 1988.]~~

Section 2. Filing Fees. Any owner or operator who submits a part A application for a treatment, storage, or disposal facility shall submit with the application a filing fee in the amount of \$1,000.

Section 3. Review Fees. (1) Permitting Fees. In addition to those fees identified in KRS 224.46-016, any owner or operator who submits a permit for a treatment, storage, or disposal facility shall submit with the application the following unit fees:

- (a) Containment buildings - \$7,400;
- (b) Drip pads - \$3,700;
- (c) Miscellaneous units:
 - 1. Treatment unit - \$15,800;
 - 2. Storage unit - \$3,700; and
 - 3. Disposal unit - \$12,200; and
- (d) Boilers and industrial furnaces - \$19,400.

(2) Closure Fees. Any owner or operator who submits a closure plan for a treatment, storage, or disposal facility shall submit with the application the following fees:

- (a) A closure plan fee of \$3,600;
- (b) A RCRA facility assessment fee in accordance with KRS 224.46-016 [of \$14,500]; and

(c) A review fee for each type of hazardous waste management unit being closed. The fee for incinerators shall be submitted one (1) time for each different type of incinerator. The fees for tanks and containers shall be submitted one (1) time for each different tank design or container type. Tank design criteria includes differences in materials of construction, pressure vessels, nonpressure vessels, shape and ancillary equipment. Container types include drums, tote bins, bottles and roll-off boxes. The fees shall be:

- 1. Incinerator - \$2,000;
- 2. Waste piles - \$1,000;
- 3. Surface impoundments - \$1,500;
- 4. Tanks - \$660;
- 5. Containers - \$460;
- 6. Land treatment - \$2,000; ~~and~~
- 7. Landfill - \$2,000;
- 8. Containment buildings - \$660;
- 9. Drip pads - \$660;
- 10. Miscellaneous units:
 - a. Treatment unit - \$2,000;
 - b. Storage unit - \$660; and
 - c. Disposal unit - \$1,000; and
- 11. Boilers and industrial furnaces - \$2,000.

(3) Corrective action fees. ~~[(2)]~~ Any owner or operator who is required to submit to the cabinet a RCRA facility investigation plan or a corrective action plan shall submit with the plans the applicable review fee upon the request of the cabinet. These fees shall be the cost of review, but shall not exceed the following amounts:

- (a) RCRA facility investigation plan - the fee as established in KRS 224.46-016; [\$14,500; and]
- (b) Corrective action plan - the fee as established in KRS 224.46-

016; [\$29,000.]

- (c) Corrective action management unit - \$3,700; and
- (d) Temporary unit:

- 1. Temporary containers - \$3,000; and
- 2. Temporary tanks - \$3,700.

(4) Modification fees. In addition to those fees specified in KRS 224.46-018, any owner or operator who modifies a permit shall submit with the modification the following fees:

(a) An owner or operator who modifies an existing hazardous waste treatment, storage, or disposal facility permit to add one (1) or more waste streams, or a waste stream with the same characteristic that is already permitted, shall submit the following fees along with the modification:

- 1. Containment buildings - \$3,400;
- 2. Drip pads - \$3,400;
- 3. Miscellaneous units:
 - a. Treatment unit - \$5,500;
 - b. Storage unit - \$3,400; and
 - c. Disposal unit - \$4,500; and
- 4. Boilers and industrial furnaces - \$6,500.

(b) An owner or operator who modifies an existing hazardous waste treatment, storage, or disposal facility permit by constructing or operating an additional hazardous waste treatment, storage, or disposal unit, or by substantially modifying an existing hazardous waste treatment, storage, or disposal unit shall submit the following fees along with the modification:

- 1. Containment buildings - \$7,400;
- 2. Drip pads - \$3,700;
- 3. Miscellaneous units:
 - a. Treatment unit - \$15,800;
 - b. Storage unit - \$3,700; and
 - c. Disposal unit - \$12,200; and
- 4. Boilers and industrial furnaces - \$19,400.

Section 4. Submittal of Fees. (1) Fees shall not be refunded if an application is withdrawn.

(2) All checks or money orders shall be made payable to the Kentucky State Treasurer.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. upon request, the cabinet

will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed amendments affect owners or operators of hazardous waste storage, treatment, or disposal facilities.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First Year: There will be a slight increase in administrative costs to the Cabinet due to review and processing of permit applications and modifications.

2. Continuing costs or savings: The costs mentioned in item #1. above will continue.

3. Additional factors increasing or decreasing costs: There should not be any additional factors effecting costs.

b. Reporting and paperwork requirements: There will be a increase in additional paperwork requirements to the Cabinet due to administrative and technical review of permit applications and modifications.

4. Assessment of anticipated effect on state and local revenues: The review fees for owners or operators of a storage, treatment, or disposal facilities will increase state revenues. There are no anticipated effects on local revenues unless the local government is an owner or operator of a storage, treatment, or disposal facility.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: Implementation and enforcement of this administrative regulation will be offset by the review fees. EPA grants will also be used for the implementation and enforcement of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were not considered. These changes provide consistency with other hazardous waste regulations.

8. Assessment of expected benefits of the administrative regulation: These amendments provide consistency with other

hazardous waste regulations.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: The implementation of this regulation will not affect public health and environmental welfare.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, policies, or regulations that conflict, duplicate, or overlap this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Yes, tiering was used. This administrative regulation applies to owners and operators of hazardous waste storage, treatment, or disposal facilities. Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments adopt changes that apply to owners and operators of a hazardous waste storage, treatment, or disposal facility. These changes are necessary to maintain consistency between state and federal programs. The addition clarifies the applicability of the standards. In addition, the regulation has been modified to reflect the requirements of regulation construction specified in KRS 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: There is no federal mandate for this administrative regulation.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that owns or operates a hazardous waste treatment, storage, or disposal facility.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the Cabinet establish a comprehensive program for the proper management of hazardous waste. The agencies affected by this

administrative regulation will be subject to these requirements.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)**

401 KAR 42:005. Definitions related to 401 KAR Chapter 42.

RELATES TO: KRS 224.01, 224.10, 224.60, 40 CFR Part 281, 42 USC 6991c

STATUTORY AUTHORITY: KRS 224.01-100, 224.60-105, 40 CFR Part 280, Part 281, 42 USC 6991c

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105(2) requires the cabinet to regulate underground storage tank (UST) systems by requiring notification, minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other standards to protect human health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. This chapter identifies requirements for UST systems. This administrative regulation defines terms used throughout this chapter.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or other administrative regulations of 401 KAR Chapter 42, or otherwise specifically indicated by context, terms in 401 KAR Chapter 42 shall have the meanings given in this administrative regulation.

(1) "Aboveground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the above ground portion of a UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from a UST system.

(2) "Ancillary equipment" means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from a UST system.

(3) "Background" means the concentration of substances consistently present in the environment at, or regionally proximate to, a release, but outside of the influence of the release. There are two (2) types of background as follows:

(a) Natural background ~~is~~ ~~means~~ the amount of naturally-occurring substances in the environment, exclusive of that from anthropogenic sources; and

(b) Ambient background ~~is~~ ~~means~~ the amount of both naturally-occurring substances and ubiquitous anthropogenic substances in the environment at levels that are representative of the region surrounding the site and at levels not attributable to activities on the property.

(4) "Belowground release" means any release to the subsurface of the land or to groundwater. This includes, but is not limited to, releases from the belowground portions of a UST system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from a UST system.

(5) "Beneath the surface of the ground" means, for purposes of identifying an underground storage tank system as set forth in KRS 224.60-100, beneath the ground surface or otherwise covered with earthen materials.

(6) "Cathodic protection" means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a UST system can be cathodically protected through the application of either galvanic anodes or impressed current.

(7) "Cathodic protection tester" means a person accredited or certified as a cathodic protection tester by the National Association of Corrosion Engineers (NACE International).

(8) ~~["CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 USC 9601 et seq.).~~

~~(9)~~ "Change in service" means continued use of a UST system to store a nonregulated substance.

~~(9)~~ ~~(10)~~ "Compatible" means the ability of two (2) or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the UST system under conditions likely to be encountered in the UST system.

~~(10)~~ ~~(11)~~ "Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a UST system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two (2) UST systems shall be allocated equally between them.

~~(11)~~ ~~(12)~~ "Consumptive use" means, with respect to heating oil, consumed on the premises where stored.

~~(12)~~ ~~(13)~~ "Contamination" means degradation in the quality of surface water, sediment, groundwater, air, soil, or bedrock as a result of human activities.

~~(13)~~ ~~(14)~~ "Corrective action" means those actions necessary to protect human health and the environment in the event of a release from a UST system.

~~(14)~~ ~~(15)~~ "Corrosion expert" means a person accredited or certified as being a corrosion expert by the National Association of Corrosion Engineers (NACE International), or a professional engineer registered by the Kentucky State Board of Registration for Professional Engineers and Land Surveyors with certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

~~(15)~~ ~~(16)~~ "Dielectric material" means a material that does not conduct direct electrical current.

~~(16)~~ ~~(17)~~ "Domestic-use well, spring, cistern, or well head protection area" means a well, spring, cistern, or well head protection area currently used or potentially used by humans for personal, commercial, or agriculture purposes.

~~(17)~~ ~~(18)~~ "Electrical equipment" means underground equipment containing dielectric fluid used for the operation of equipment such as transformers and buried electrical cable.

~~(18)~~ ~~(19)~~ "Empty" means all regulated substances have been removed from the UST system using commonly employed practices so that no more than two and five-tenths (2.5) centimeters (one (1) inch) of residue, or three-tenths (0.3) percent by weight of the total capacity of the UST system, remain in the system.

~~(19)~~ ~~(20)~~ "Environmentally sensitive feature" means surface waters and wetland areas. The term shall not include road-side ditches or manmade drainage ways that do not discharge to surface waters or wetland areas.

~~(20)~~ ~~(21)~~ "EPA identification number" means the number as-

signed by the U.S. EPA or the cabinet to each hazardous waste generator; transporter; and treatment, storage, or disposal facility.

(21) [(22)] "Excavation zone" means the volume containing the UST system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

(22) [(23)] "Existing UST system" means a UST system used to contain an accumulation of regulated substances or for which installation has commenced on or before December 22, 1988. Installation is considered to have commenced if:

(a) The owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the UST system; and

(b) 1. A continuous on-site physical construction or installation program has begun; or

2. The owner or operator has entered into contractual obligations, that cannot be canceled or modified without substantial loss, for physical construction at the site or installation of the UST system to be completed within a reasonable time.

(23) [(24)] "Facility" or "site" means the property on which the UST system is located.

(24) [(25)] "Farm tank" means a tank located on a tract of land devoted to the production of crops (including nurseries) or raising animals (including fish hatcheries) and associated residences and improvements.

(25) [(26)] "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government, including any government corporation, and the U.S. Government Printing Office.

(26) [(27)] "Flow-through process tank" means a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

(27) [(28)] "Free product" means a regulated substance that is present as a nonaqueous phase liquid (for example, liquid not dissolved in water).

(28) [(29)] "Gathering lines" means pipelines, equipment, facilities, and buildings used in the transportation of oil or gas during oil or gas production or gathering operations.

(29) [(30)] "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table, and perched water zones below the B-soil horizon, including water circulating through fractures, bedding planes, and solution conduits.

(30) [(31)] "Hazardous substance UST system" means a UST system that:

(a) Contains a hazardous substance identified in Section 101(14) of CERCLA (but not including any substance regulated as a hazardous waste under 401 KAR Chapters 31 through 39), or contains a mixture of such a hazardous substance and petroleum; and

(b) Is not a petroleum UST system.

(31) [(32)] "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one (1) of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

(32) [(33)] "Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

(33) [(34)] "Hydrogeologically downgradient" means in the direction from a point of higher hydrostatic pressure to a point of lower hydrostatic pressure, as defined by wells or piezometers constructed to the same depth, or in the direction from a point where a higher water table elevation exists to a point where a lower water

table elevation exists, as defined by wells or piezometers.

(34) [(35)] "Hydrogeologically upgradient" means in the direction from a point of lower hydrostatic pressure to a point of higher hydrostatic pressure, as defined by wells or piezometers constructed to the same depth, or in the direction from a point where a lower water table elevation exists to a point where a higher water table elevation exists, as defined by wells or piezometers.

(35) [(36)] "Leak-detection system" means a method of monthly monitoring capable of detecting a failure in a UST system of either the primary or secondary containment system, or capable of detecting the presence of a release of a regulated substance outside the UST system.

(36) [(37)] "Liquid trap" means a sump, well cellar, or other trap used in association with oil and gas production, gathering, and extraction operations (including gas production plants) for the purpose of collecting oil, water, and other liquids.

(37) [(38)] "Maintenance" means the normal operational upkeep to prevent a UST system from releasing a regulated substance.

(38) [(39)] "Monitoring" means the act of systematically collecting and accessing data on operational parameters or on the quality of the air, soil, bedrock, groundwater, sediment, or surface water.

(39) [(40)] "Motor fuel" means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used as a fuel in the operation of a motor or engine.

(40) [(41)] "Newly discovered UST system" means a UST system at a facility that would not have been discovered by the owner or operator by the exercise of ordinary diligence.

(41) [(42)] "New UST system" means a UST system that will be used to contain an accumulation of regulated substances and for which installation has commenced after December 22, 1988.

(42) [(43)] "Noncommercial purposes" means, with respect to motor fuel, not for resale.

(43) [(44)] "Off site" means any property other than the facility.

(44) [(45)] "Operation" means the storage and dispensing of a regulated substance from a UST system.

(45) [(46)] "On the premises where stored" means, with respect to heating oil, UST systems located on the same property where the stored heating oil is used.

(46) [(47)] "Operational life" means the period beginning when installation of the UST system has commenced and ending when the UST system is closed under 401 KAR 42:070 or 401 KAR 42:071.

(47) [(48)] "Operator" means any person in control of, or having responsibility for, the daily operation of the UST system.

(48) [(49)] "Overfill release" means a release that occurs when a UST system is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

(49) [(50)] "Owner" means:

(a) In the case of a UST system in use on November 8, 1984, or brought into use after that date, any person who owns a UST system used for storage; use, or dispensing of a regulated substance; and

(b) In the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned the UST system immediately before the discontinuation of its use.

(50) [(51)] "Permanent closure" means either removing the UST system from the ground or filling the UST system with an inert solid material or a combination of both methods.

(51) [(52)] "Permanently closed" means a UST system was:

(a) Closed prior to December 22, 1988 in accordance with the requirements of the Kentucky Fire Marshal, in accordance with applicable industry standards at the time of closure, and in such a manner as to prevent any future use of the UST system;

(b) Closed after December 22, 1988, but prior to December 19, 1990, in accordance with 40 CFR 280.71 through 280.74;

(c) Closed after December 19, 1990, but prior to April 18, 1994, in accordance with administrative regulations in effect at that time;

(d) Closed after April 18, 1994, but prior to January 1, 1996, in

accordance with the emergency administrative regulations that took effect on February 15, 1994; or

(e) Closed after January 1, 1996 in accordance with 401 KAR 42:070 or 401 KAR 42:071 in effect at that time.

(52) [(53)] "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, or political subdivision of a state. The term also includes a consortium, a joint venture, the United States government, or a commercial entity.

(53) [(54)] "Petroleum" means crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (sixty (60) degrees Fahrenheit and fourteen and seven-tenths (14.7) pounds per square inch absolute). The term includes, but is not limited to, petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

(54) [(55)] "Petroleum UST system" means a UST system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. The term includes those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

(55) [(56)] "Pipe" or "piping" means a hollow cylinder or tubular conduit that is constructed of nonearthen materials (for example, concrete, steel, plastic, or a combination of such materials).

(56) [(57)] "Pipeline facilities (including gathering lines)" means new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.

(57) [(58)] "Point of compliance" means the property boundaries of the facility.

(58) [(59)] "Regulated substance" shall have the meaning specified in KRS 224.60-100.

(59) [(60)] "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of a regulated substance into groundwater, surface water, surface or subsurface soils, or interstitial space between a UST system and its secondary barrier or secondary containment. The term shall not include spilling, leaking, emitting, discharging, escaping, leaching, or disposing that is permitted or authorized by Kentucky or federal law.

(60) [(61)] "Release detection" means a method of determining whether a release of a regulated substance has occurred from the UST system into the environment or into the interstitial space between a UST system and its secondary barrier or secondary containment.

(61) [(62)] "Repair" means to restore a UST system component that has caused a release of a regulated substance from a UST system.

(62) [(63)] "Residential tank" means a tank located on property used primarily for dwelling purposes.

(63) [(64)] "Residual tank materials" means any accumulated tank water, bottom sediments, mixture of product and water, or other material remaining in a tank after removal of tank contents.

[(65)] "SARA" means the Superfund Amendments and Reauthorization Act of 1986.]

(64) [(66)] "Septic tank" means a watertight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from the receptacle is distributed for disposal through the soil, and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

(65) [(67)] "Storm-water or wastewater collection system" means piping, pumps, conduits, and any other equipment used to collect or transport the flow of surface water run-off resulting from precipitation or domestic, commercial, or industrial wastewater to or from retention areas or any areas where treatment is designated to occur.

(66) [(68)] "Surface impoundment" means a natural topographic

depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials) that is not an injection well.

(67) [(69)] "Surface water" means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters; marshes and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection to the surface. Effluent ditches and lagoons used for waste treatment that are situated on property owned, leased, or under valid easement by a permitted discharger are not considered to be surface waters of the Commonwealth.

(68) [(70)] "Tank" means a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials (for example, concrete, steel, plastic, or a combination of such materials) that provide structural support.

(69) [(71)] "Tank contents" means any accumulated tank water, bottom sediments, or mixture of product and water that is removed from a tank at one (1) time by the same method and that is accepted by a recycling facility.

(70) [(72)] "Temporary closure" means taking a UST system out of operation pursuant to the requirements of 401 KAR 42:070, Section 3.

(71) [(73)] "Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the UST system situated on or above the surface of the floor.

(72) [(74)] "Underground utility conduits" means any manmade underground conduit installed for utility purposes either on or off site.

(73) [(75)] "Upgrade" means the addition of or retrofitting of UST system components to improve the ability of a UST system to prevent the release of a regulated substance. Examples of upgrades include the addition of cathodic protection, improvements to the interior lining, and improvements of spill and overfill controls.

[(76)] "U.S. EPA" or "EPA" means the United States Environmental Protection Agency.]

(74) [(77)] "UST system", "tank system", or "underground storage tank system" means an underground storage tank (as defined in KRS 224.60-100), connected underground piping, underground ancillary equipment, and containment system, if any.

(75) [(78)] "Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by context, acronyms and abbreviations used in 401 KAR Chapter 42 shall have the meaning as identified in Table 1 of this administrative regulation.

Table 1. Acronyms and Abbreviations.

<u>CERCLA</u>	<u>Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 USC 9601 <i>et seq.</i>)</u>
<u>CFR</u>	<u>Code of Federal Regulations</u>
<u>DEP</u>	<u>Kentucky Department for Environmental Protection</u>
<u>KAR</u>	<u>Kentucky Administrative Regulation</u>
<u>KRS</u>	<u>Kentucky Revised Statute</u>
<u>SARA</u>	<u>Superfund Amendments and Authorization Act of 1986</u>
<u>USC</u>	<u>United States Code</u>
<u>U.S. EPA</u>	<u>United States Environmental Protection Agency</u>
<u>UST</u>	<u>Underground Storage Tank</u>

JAMES E. BICKFORD, Secretary
 APPROVED BY AGENCY: July 11, 1996
 FILED WITH LRC: July 12, 1996 at 9 a.m.
 PUBLIC HEARING: A public hearing to receive comments on this

proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221.

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: This administrative regulation establishes definitions used in 401 KAR Chapter 42, which governs the underground storage tank program. This administrative regulation does not establish requirements and therefore does not directly affect regulated entities.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: This administrative regulation defines terms and does not establish requirements, therefore there will be no effect.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: This administrative regulation defines terms and does not establish requirements, therefore there will be no effect.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: This administrative regulation defines terms and does not establish requirements, therefore there will be no effect.

2. Second and subsequent years: This administrative regulation defines terms and does not establish requirements, therefore there will be no effect.

3. Additional factors increasing or decreasing costs: This administrative regulation defines terms and does not establish requirements, therefore there will be no effect.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First Year: This administrative regulation defines terms and does not establish requirements, therefore there will be no effect.

2. Continuing costs or savings: This administrative regulation defines terms and does not establish requirements, therefore there will be no effect.

3. Additional factors increasing or decreasing costs: This administrative regulation defines terms and does not establish requirements, therefore there will be no effect.

b. Reporting and paperwork requirements: This administrative regulation defines terms and does not establish requirements, therefore there will be no effect.

4. Assessment of anticipated effect on state and local revenues: This administrative regulation defines terms and does not establish requirements, therefore there will be no effect.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation defines terms and does not establish requirements, therefore there will be no effect.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: This administrative regulation defines terms and does not establish requirements, therefore there will be no effect.

b. Kentucky: This administrative regulation defines terms and does not establish requirements, therefore there will be no effect.

7. Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation defines terms as required by KRS Chapter 13A. There were no alternatives to promulgating this administrative regulation.

8. Assessment of expected benefits of the administrative regulation: This administrative regulation defines terms and will serve to provide standardization for use of terms and concepts established in 401 KAR Chapter 42.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: This administrative regulation defines terms and does not establish requirements, therefore there will be no effect.

b. State whether a detrimental effect on the environment and public health would result if not implemented: This administrative regulation defines terms and does not establish requirements, therefore there will be no effect.

c. If detrimental effect would result, explain detrimental effect: This administrative regulation defines terms and does not establish requirements, therefore there will be no effect.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: This administrative regulation does not overlap, conflict, or duplicate any statute, administrative regulation, or government policy.

a. Necessity of regulation if in conflict: There is no conflict.

b. If in conflict, was the effort made to harmonize the administrative regulation with conflicting provisions: There is no conflict.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Yes, tiering was applied. This administrative regulation defines terms used in 401 KAR Chapter 42.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.60-105 is a state mandate that requires the Cabinet to regulate underground storage tanks by requiring minimum

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construction and performance standards, leak detection, record keeping, reporting releases, corrective actions, closure, and financial responsibility to protect human health and the environment. KRS 224.60-105 also requires the Cabinet to adopt a regulatory program that implements federal regulatory requirements for underground storage tanks. KRS 13A.222(4)(e) is a state mandate that requires that all definitions be defined within a separate administrative regulation and that the administrative regulation be the first administrative regulation within the specific chapter of the Kentucky Administrative Regulations Service to which the definitions apply. Pursuant to this mandate, this administrative regulation establishes definitions for all terms used within 401 KAR Chapter 42, which governs underground storage tanks. These terms are assimilated from existing federal regulatory definitions and existing statutory definitions where applicable.

2. State compliance standards: This administrative regulation establishes definitions for all terms used within 401 KAR Chapter 42. These terms are assimilated from existing federal regulatory definitions and existing statutory definitions where applicable.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation. 40 CFR Part 280 establishes general underground storage tank system standards applicable to facilities across the United States. The federal requirements are general in nature and they defer to the state regulatory agencies to establish detailed, state-specific standards. This administrative regulation establishes definitions for all terms used within 401 KAR Chapter 42, which governs underground storage tanks. These terms are assimilated from existing federal regulatory definitions and existing statutory definitions where applicable.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: There is no federal mandate for this administrative regulation. KRS 224.60-105(2) requires the Cabinet to establish minimum standards for underground storage tanks to protect the public health and the environment. KRS 224.60-137 requires that the Cabinet establish standards based on a corrective action study conducted for the Petroleum Storage Tank Environmental Assurance Fund Commission, unless the Cabinet justifies deviation from the standards recommended in the study. Additionally, the federal program looks to the states to establish program details consistent with the state's needs and certain broad, federal criteria. This administrative regulation establishes definitions for all terms used within 401 KAR Chapter 42, which governs underground storage tanks. These terms are assimilated from existing federal regulatory definitions and existing statutory definitions where applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that is the owner or operator of a underground storage tank system regulated under 401 KAR Chapter 42.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.60-105 requires the Cabinet to regulate underground storage tanks by establishing minimum

construction and performance standards, leak detection, record keeping, reporting requirements, corrective actions, closure, and financial responsibility to protect human health, safety, and the environment. This administrative regulation establishes definitions for all terms within 401 KAR Chapter 42. These terms are assimilated from existing federal regulatory definitions and existing statutory definitions where applicable. Agencies referenced in item 2 of this fiscal note will use these definitions.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): Because this administrative regulation establishes definitions for 401 KAR Chapter 42, this administrative regulation will not affect state, county, or local expenditures.

Other Explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (Amendment)

401 KAR 48:005. Definitions related to 401 KAR Chapter 48.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.50, 224.99, 40 CFR Part 258

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-110, 224.40-305, 224.43-340, 224.50-824, 224.50-832

NECESSITY AND FUNCTION: KRS 224.10-100 and the waste management provisions of KRS Chapter 224 require the cabinet to promulgate administrative regulations for the management of solid, special, and hazardous wastes. This chapter establishes technical requirements applicable to the management of solid waste. This administrative regulation defines terms used in the administrative regulations of this chapter.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or otherwise specifically indicated by context, terms in 401 KAR Chapter 48 shall have the meanings given in this Section.

(1) "100-year floodplain" means any land area which is subject to a one (1) percent or greater chance of flooding in any given year from any source.

(2) "100-year flood" means a flood that has a one (1) percent chance of being equaled or exceeded in any given year.

(3) "Aboveground tank" means a device meeting the definition of "tank" and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

(4) "Active fault" means a land area which, according to the weight of geological evidence, has a reasonable probability of being affected by movement along a fault to the extent that a waste site or facility would be damaged and thereby pose a threat to human health and the environment.

(5) "Active life" of a facility means the period from the initial receipt of waste at a waste site or facility until the cabinet receives certification of final closure.

(6) "Active portion" means any area of a facility where treatment, storage, or disposal operations are being or have been conducted and which have not been closed. It includes the treated area of a landfill and the active face of a landfill. Covered, closed, or inactive portions of landfills, building roofs, and roads are excluded unless

designated as "active portions" by the cabinet.

(7) "Administrative application" means the standard forms and format used for applying for a solid waste site or facility permit as specified in 401 KAR 47:160 and 401 KAR 47:180.

(8) "Admixed liner" means a liner made from a mixture of any of a multitude of materials, often asphalt or cement, with widely varying physical and chemical properties. Admixed liners shall be demonstrated to be structurally sound and chemically resistant to the waste placed in it so as to be capable of supporting the waste without cracking or disintegrating or allowing waste or leachate to escape.

(9) "Agricultural waste" means any nonhazardous waste resulting from the production and processing of on-the-farm agricultural products, including manures, prunings and crop residues.

(10) "Airport" means public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

(11) "Application" means the form approved by the cabinet for applying for a permit, including any additions, revisions or modifications and any narrative and drawings required by 401 KAR Chapters 47 or 48.

(12) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(13) "Attenuation" means any decrease in the maximum concentration or total quantity of an applied chemical or biological constituent in a fixed time or distance traveled resulting from a physical, chemical, or biological reaction or transformation occurring in the zone of aeration or zone of saturation.

(14) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit or part of a facility, such as the plant manager, superintendent, or person of equivalent responsibility.

(15) "Base flood" means a flood that has a one (1) percent or greater chance of recurring in any year, or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

(16) "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

(17) "Bird hazard" means an increase in the likelihood of bird or aircraft collisions that may cause damage to the aircraft or injury to its occupants.

(18) "Cabinet" shall have the meaning specified in KRS 224.01-010.

(19) "Cation exchange capacity" means the sum of exchangeable cations a soil can absorb expressed in milliequivalents per 100 grams of soil as determined by sampling the soil to the depth of cultivation or solid waste placement, whichever is greater, and analyzing by the summation method for distinctly acid soils or the sodium acetate method for neutral, calcareous, or saline soils.

(20) "Cell" means a portion of any landfill which is isolated, usually by means of an approved barrier.

(21) "Certification" means a statement of professional opinion based upon knowledge and belief.

(22) "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements.

(23) "Closed unit" means any solid waste unit that no longer receives waste as of May 8, 1990 and has received all required final layers of cover material.

(24) "Closure care" means the routine care, maintenance, monitoring, and any required corrective action of a solid waste

disposal site or facility following certification of closure until the applicable requirements are met.

(25) "Closure" shall have the meaning specified in KRS 224.01-010.

(26) "Coal mining solid waste" means solid waste, as defined by KRS 224.01-010, that is generated at, and is incidental to, a coal exploration operation or surface mining and reclamation operation regulated under KRS Chapter 350, and shall not include wastes generated by households, communities, cities, counties, or any person or business other than those regulated under KRS Chapter 350.

(27) "Coal mining waste" means earth materials which are combustible, physically unstable, or acid-forming or toxic-forming, that are generated during and incidental to the mining and extraction of coal and to the washing and crushing of coal. The term does not include used oil, paints or flammable liquids. The term includes the following:

(a) Refuse which is that waste material in the raw coal which it is the object of cleaning to remove;

(b) Overburden which includes all of the earth and other geologic materials, excluding topsoil, which lie above a natural deposit of coal and also means such earth and other material after removal from their natural state in the process of mining; and

(c) Coal mining by-products which include any material that is not one (1) of the primary products of a particular coal mining operation, is a secondary and incidental product of the particular operation and would not be solely and separately mined by the particular operation. The term does not include an intermediate mining product which results from one (1) of the steps in a mining process and is processed through the next step of the process within a short time. An example of a coal mining by-product is that part of the ore deposit that is too low in grade to be of economic value at the time, but which is stored separately in the hope that it can be profitably treated later.

(28) "Collection box" shall have the meaning specified in KRS 224.01-010.

(29) "Commercial solid waste" shall have the meaning specified in KRS 224.01-010.

(30) "Component" means either the tank or ancillary equipment of a tank system.

(31) "Compost" shall have the meaning specified in KRS 224.01-010.

(32) "Composting" shall have the meaning specified in KRS 224.01-010.

(33) "Conditionally exempt small quantity generator" means:

(a) A generator who generates no more than 100 kilograms of hazardous waste in a calendar month; and

(b) A generator who generates acutely hazardous waste listed in Sections 2, 3, and 4(5) of 401 KAR 31:040 in a calendar month in quantities greater than one (1) kilogram. All quantities of that acutely hazardous waste are subject to administrative regulation under 401 KAR Chapters 32 through 39, and the notification and permitting requirements of KRS 224.01-400, 224.40-310, 224.46-510, 224.46-580, and 224.50-130 to 224.50-413.

(34) "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(35) "Construction/demolition debris landfill" means a solid waste site or facility for the disposal of construction/demolition waste. The technical requirements for construction/demolition debris landfills are found in 401 KAR 47:080, 401 KAR 48:050, and 401 KAR 48:060.

(36) "Construction/demolition waste" means waste resulting from the construction, remodeling, repair, and demolition of structures and roads, and for the disposal of uncontaminated solid waste consisting of vegetation resulting from land clearing and grubbing, utility line maintenance, and seasonal and storm related cleanup.

(37) "Construction materials" means nonhazardous nonsoluble

material, including but not limited to steel, concrete, brick, asphalt roofing material, or lumber from a construction or demolition project. Mixture of construction and demolition debris with any amount of other types of waste may cause it to be classified as other than construction materials.

(38) "Contained landfill" means a solid waste site or facility that accepts solid waste for disposal. The technical requirements for contained landfills are found in 401 KAR 47:080, 401 KAR 48:050, and 401 KAR 48:070 to 401 KAR 48:090.

(39) "Contaminate" means introduce a substance that would cause:

(a) The concentration of that substance in the groundwater to exceed the maximum contaminant level specified in 401 KAR 30:031, Sections 5 and 6 of 401 KAR 47:030, or Section 8 of 401 KAR 34:060;

(b) An increase in the concentration of that substance in the groundwater where the existing concentration of that substance exceeds the maximum contaminant level specified in 401 KAR 30:031, 401 KAR 47:030, or Section 8 of 401 KAR 34:060; or

(c) A significant increase above established background levels, for substances that do not have an established maximum contamination level.

(40) "Contamination" means the degradation of naturally occurring water, air, or soil quality either directly or indirectly as a result of human activities.

(41) "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in the event of a fire, explosion, or release of waste or waste constituents into the environment which has the potential for endangering human health and the environment. Financial planning to identify resources for initiation of such action is a part of contingency plan development.

(42) "Convenience center" shall have the meaning specified in KRS 224.01-010.

(43) "Cover material" means soil or other suitable material that is spread and compacted on the top and side slopes of disposed waste in order to control disease vectors, gases, erosion, fires, and infiltration of precipitation or run-on; support vegetation; provide trafficability; or assure an aesthetic appearance.

(44) "Demonstration" shall have the meaning specified in KRS 224.01-010.

(45) "Destruction or adverse modification" means an alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

(46) "Dike" means an embankment or ridge of either natural or manmade materials used to prevent the movement of liquids, sludges, solids, or other materials.

(47) "Disease vector" means all insects, birds or gnawing animals such as rats, mice or ground squirrels, which are capable of transmitting pathogens.

(48) "Disposal facility" means a facility or part of a facility at which solid waste is intentionally placed into or on any land or water and at which waste will remain after closure.

(49) "Disposal" shall have the meaning specified in KRS 224.01-010.

(50) "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(51) "Draft permit" shall have the same meaning as "proposed permit".

(52) "Effluent limitations" shall have the same meaning as KRS 224.01-010.

(53) "Emergency permit" means a permit issued by the cabinet to temporarily store, treat or dispose of hazardous waste in accordance with the provisions of Section 2 of 401 KAR 38:060, to temporarily manage, process, or dispose of a solid waste in accordance with the provisions of Section 2 of 401 KAR 47:150 or to temporarily store,

treat, or dispose of special waste in accordance with the provisions of Section 1 of 401 KAR 45:135.

(54) "Endangered or threatened species" means any species listed as such pursuant to Section 4 of the Endangered Species Act, as amended, 16 USC 1536.

(55) "Engineer" shall have the meaning specified in KRS 322.010. An independent, professional engineer shall be registered in Kentucky pursuant to KRS 322.040 and shall be qualified to engage in waste management engineering practices.

(56) "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice and which has a channel bottom that is always above the local water table.

(57) "Equivalent method" means any testing or analytical method, approved jointly by the administrator and the secretary under 401 KAR Chapter 31, or methods in 401 KAR Chapters 47 and 48, approved by the secretary of the cabinet.

(58) "Existing unit" means any solid waste disposal unit that was receiving solid waste as of May 8, 1990 and has not received the final layers of cover material.

(59) "Explosive gas" means methane (CH₄).

(60) "Facility structures" means any buildings and sheds or utility or drainage lines on the solid waste site or facility.

(61) "Facility" means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of waste. A facility may consist of several treatment, storage, or disposal operational units, such as one (1) or more landfills, surface impoundments, or combination of them.

(62) "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation, and the United States Government Printing Office.

(63) "Final closure" of a solid waste site or facility means the approved closure of a solid waste site or facility in accordance with 401 KAR 30:031, 401 KAR 47:030 and the applicable requirements of 401 KAR 48:060, 401 KAR 48:090, 401 KAR 48:170, or 401 KAR 48:200.

(64) "Flood plain" means areas adjoining inland waters which are inundated by the base flood, unless otherwise specified in 401 KAR 30:031 or 401 KAR 47:030, and includes: 100-year floodplain and floodway.

(65) "Floodway" means the channel of the waterway, stream or river and that portion of the adjoining floodplain which provides for passage of the 100-year flood flow without increasing the floodwater depth across the 100-year floodplain by more than one (1) foot.

(66) "Food chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(67) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(68) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.

(69) "Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.

(70) "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table, and perched water zones below the B-soil horizon, including water circulating through fractures, bedding planes, and solution conduits.

(71) "Holocene" means the most recent epoch of the quaternary period, extending from the end of the pleistocene to the present.

(72) "Household solid waste" shall have the meaning specified in KRS 224.01-010.

(73) "Hydric soils" means soils that, in their undrained condition, are saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth

and regeneration of hydrophytic vegetation.

(74) "Hydrophytic vegetation" means a plant growing either in water, or in a substrate that is at least periodically deficient of oxygen during a growing season as a result of excessive water content.

(75) "Incinerator" means any enclosed device using controlled flame combustion for burning solid waste.

(76) "Industrial solid waste" shall have the meaning specified in KRS 224.01-010.

(77) "Inert landfill" means a facility for the proper disposal of inert, nonsoluble and nonputrescible solid waste, including construction materials, certain industrial or special wastes, and other waste material with specific approval from the cabinet. Certain putrescible wood product wastes (such as cardboard, paper, sawdust, wood chips, and tree trimmings) may be considered by the cabinet for disposal at inert landfills.

(78) "Infectious waste" means those wastes which may cause disease or reasonably be suspected of harboring pathogenic organisms; included are wastes resulting from the operation of medical clinics, hospitals, and other facilities producing wastes which may consist of, but are not limited to, diseased human and animal parts, contaminated bandages, pathological specimens, hypodermic needles, contaminated clothing, and surgical gloves.

(79) "Inground tank" means a device meeting the definition of "tank" in this section and that whereby a portion of the tank is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(80) "Intermittent stream" means a stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year.

(81) "Karst terrain" means a type of topography where limestone, dolomite or gypsum is present and is characterized by naturally occurring closed topographic depressions or sinkholes, caves, disrupted surface drainage, and well developed underground solution channels formed by dissolution of these rocks by water moving underground.

(82) "Key personnel" shall have the meaning specified in KRS 224.01-010.

(83) "Landfarming facility" means a facility for land application of sludges or other solid waste by any method for purposes of disposal. It can be on any piece or pieces of land and may improve the physical and chemical qualities of the land for agricultural purposes, but does not alter the topography of the application area as revealed by contours and will not disturb the soil below three (3) feet from the surface.

(84) "Landfill" means a solid waste site or facility for the disposal of specific wastes that is located, designated, constructed, operated, maintained, and closed in conformance with 401 KAR Chapter 47 and 48, and 401 KAR 30:031, and receives a case-by-case design review by the cabinet.

(85) "Lateral expansion" means a horizontal expansion of the waste boundaries of an existing solid waste landfill unit.

(86) "Leachate" means any liquid including any suspended components in the liquid, that has percolated through or drained from waste.

(87) "Liner" means a continuous layer of natural or manmade material, beneath or on the sides of a waste site or facility, including but not limited to a waste pile, surface impoundment, landfill, or landfill cell, or beneath or on the sides of a waste site or facility which restricts the movement of the wastes, waste constituents, or leachate.

(88) "Lower explosive limit" means the lowest percent by volume of a mixture of explosive gases which will propagate a flame in air at twenty-five (25) degrees Celsius and atmospheric pressure.

(89) "Major modification" means for solid waste sites and facilities, a change meeting the criteria in Section 3 of 401 KAR 47:130.

(90) "Management facility" means a facility or part of a facility at which solid waste is held for a temporary period, at the end of which solid waste is processed, disposed or managed elsewhere.

(91) "Materials recovery facility" shall have the meaning specified in KRS 224.01-010.

(92) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

(93) "Miscellaneous unit" means a solid waste management unit where waste is disposed and that is not a container, tank, surface impoundment, pile, landfarming unit, landfill, incinerator, underground injection well with appropriate technical standards under 40 CFR Part 146, or unit eligible for a research, development, and demonstration permit under section 3 of 401 KAR 47:150.

(94) "Monitoring well" means a well used to obtain water samples for water quality and quantity analysis and groundwater levels.

(95) "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.

(96) "Municipal solid waste disposal facility" shall have the meaning specified in KRS 224.01-010.

(97) "Municipal solid waste reduction" shall have the meaning specified in KRS 224.01-010.

(98) "Municipal solid waste" shall have the meaning specified in KRS 224.01-010.

(99) "Newsprint" shall have the meaning specified in KRS 224.01-010.

(100) "Notice of intent" means the standard forms for applying for a solid waste site or facility permit as required by 401 KAR 47:160, 401 KAR 47:170 and 401 KAR 48:200.

(101) "Off-site" means properties noncontiguous to the site.

(102) "On-site" means on the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing, as opposed to going along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access is also considered on-site property.

(103) "Open burning" means the combustion of any material or solid waste without:

(a) Control of combustion air to maintain adequate temperature for efficient combustion;

(b) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(c) Control of emission of the gaseous combustion products.

(104) "Open dump" shall have the meaning specified in KRS 224.01-010.

(105) "Onground tank" means a device meeting the definition of "tank" in this section and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external bottom of the tank cannot be visually inspected.

(106) "Operational plan" means the approved plan of operations filed with the cabinet which describes the method of operation that the permittee will use in the treatment, storage, or disposal of wastes.

(107) "Operator" means any person responsible for overall operation of an on-site or off-site waste facility, including any private contractor conducting operational activities at a federal facility.

(108) "Owner" means any person who owns an on-site or off-site waste facility, or any part of a facility.

(109) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface run-off. The term does not include "intermittent stream" or "ephemeral stream".

(110) "Periodic application of cover material" means the application and compaction of soil or other suitable material over disposed waste at a solid waste site or facility at the end of each operating day

or at such frequencies and in such a manner as to reduce the risks of fire and to impede disease vector's access to the waste.

(111) "Permit by rule" means authorization allowing certain classes of sites or facilities to manage waste consistent with 401 KAR Chapters 30 to 49, without submission of a registration or permit application to the cabinet. Examples of solid waste sites or facilities which are permitted by rule include facilities identified in 401 KAR 47:150.

(112) "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management administrative regulations. The term permit includes permit-by-rule, registered permit-by-rule, research, development, and demonstration permit, and emergency permit. However, the term permit does not include draft permit or proposed permit.

(113) "Permittee" means any person holding a valid permit issued by the cabinet to manage, treat, store, or dispose of waste.

(114) "Person" shall have the meaning specified in KRS 224.01-010.

(115) "Personnel" or "facility personnel" means all persons who work at or oversee the operations of a waste facility, and whose actions or failure to act may result in noncompliance with the requirements of the waste management administrative regulations.

(116) "Pile" or "waste pile" means any noncontainerized accumulation of nonflowing solid waste that is used for processing or management.

(117) "Point of compliance" means for solid waste site and facilities, groundwater monitoring wells located within 250 feet of the waste boundary as approved by the cabinet.

(118) "Point source" means any discernible, confined, and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(119) "Pollutant" shall have the same meaning as KRS 224.01-010.

(120) "Polychlorinated biphenyls" or "PCB" means halogenated organic compounds defined in accordance with 40 CFR 761.2 as of July 1989.

(121) "Postclosure" shall have the same meaning as "closure care."

(122) "Postclosure care" means the manner in which a facility shall be maintained when it no longer accepts waste for disposal.

(123) "Postclosure monitoring and maintenance" shall have the meaning specified in KRS 224.01-010.

(124) "Postconsumer waste paper" shall have the meaning specified in KRS 224.01-010.

(125) "Processing facility" means a facility or part of a facility using any method, technique or procedure, including neutralization, designed to change the physical, chemical, or biological character or composition of any solid waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for handling or reduced in volume.

(126) "Proposed permit" means a document prepared by the cabinet indicating the cabinet's tentative decision to issue or deny, modify, revoke or terminate a permit.

(127) "Publicly owned treatment works" or "POTW" shall have the meaning specified in KRS 224.01-010.

(128) "Publisher" shall have the meaning specified in KRS 224.01-010.

(129) "Putrescible" means susceptible to rapid decomposition by bacteria, fungi, or oxidation sufficient to cause nuisances such as odors, gases, or other offensive conditions.

(130) "Qualified groundwater scientist" means a geologist registered in Kentucky who has received a baccalaureate or postgrad-

uate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields to enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

(131) "Recharge zone" means an area supplying the water which enters an underground drinking water source.

(132) "Recovered material processing facility" shall have the meaning specified in KRS 224.01-010.

(133) "Recovered material" shall have the meaning specified in KRS 224.01-010.

(134) "Recycled content" shall have the meaning specified in KRS 224.01-010.

(135) "Recycling center" means a facility or a part of a facility at which solid waste is received and managed in a manner amenable for the recovery of material or energy. This term does not include recycling facilities.

(136) "Recycling facility" means a facility or a part of a facility at which solid waste is processed to reclaim material or energy from the solid waste.

(137) "Recycling" shall have the meaning specified in KRS 224.01-010.

(138) "Refuse-derived fuel" shall have the meaning specified in KRS 224.01-010.

(139) "Registered permit by rule" means that certain classes of solid waste sites or facilities as specified in 401 KAR 47:080 have a permit as provided in 401 KAR 47:110 or 401 KAR 48:200.

(140) "Representative sample" means a sample of a universe or whole (for example, waste pile, lagoon, or groundwater) which can be expected to exhibit the average properties of the universe or whole.

(141) "Research, development, and demonstration permit" means a solid waste treatment or disposal facility using innovative and experimental technology as specified in sections of 401 KAR 47:150.

(142) "Residential landfill" means a facility for the proper disposal of solid waste including residential waste, commercial waste, institutional waste, and those sludges, industrial or special waste with specific approval from the cabinet.

(143) "Residual landfill" means a facility for the disposal of specific solid waste(s), including special waste, which is located, designed, constructed, operated, maintained, and closed in conformance with 401 KAR 30:031 and 401 KAR 47:030 and which receives a case-by-case design review by the cabinet.

(144) "Resource recovery" means the recovery of material or energy from waste.

(145) "Run-off" means any rainwater, leachate, or other liquid that drains overland from any part of a facility.

(146) "Run-on" means any rainwater, leachate, or other liquid that drains overland onto any part of a facility.

(147) "Salvaging" means the controlled removal of waste materials for utilization in a manner approved by the cabinet.

(148) "Sanitary landfill" means a facility for the disposal of solid waste that complies with 401 KAR 30:031 and 401 KAR 47:030.

(149) "Saturated zone" shall have the same meaning as "zone of saturation".

(150) "Scavenging" means the removal of waste materials from a waste management site or facility in a manner deemed by the cabinet to be dangerous to the health and safety of any person.

(151) "Schedule of compliance" means a schedule of remedial measures included in a permit or cabinet order, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with KRS Chapter 224 and 401 KAR Chapters 30 to 49.

(152) "Secretary" shall have the meaning specified in KRS 224.01-010.

(153) "Sewage system" shall have the meaning specified in KRS 224.01-010.

(154) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land

used in connection with the waste facility or activity.

(155) "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 BTU per pound of sludge treated on a wet-weight basis.

(156) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.

(157) "Small quantity generator" means a generator who generates more than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month.

(158) "Solid waste" shall have the same meaning as KRS 224.01-010.

(159) "Solid waste management area" or "area" shall have the meaning specified in KRS 224.01-010.

(160) "Solid waste management facility" shall have the meaning specified in KRS 224.01-010.

(161) "Solid waste management" shall have the meaning specified in KRS 224.01-010.

(162) "Solid waste site or facility" means any place at which solid waste is managed, processed or disposed by landfilling, incineration, landfarming or any other method. The term includes: construction/demolition debris landfill; collection box; contained landfill; convenience center; disposal facility; incinerator; injection well; landfarming facility; management facility; miscellaneous unit; municipal solid waste disposal facility; pile or waste pile; processing facility; recycling center; recycling facility; residual landfill; sanitary landfill; surface impoundment; tank; transfer facility; unit or solid waste unit; wastewater treatment unit; inert landfill; or residential landfill.

(163) "Solid waste unit" means a contiguous area of land on or in which solid waste is placed, or the largest area in which there is significant likelihood of mixing waste constituents in the same area. Examples of solid waste units include a surface impoundment, a waste pile, a land processing area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system, and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

(164) "State" means any of the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands or Guam but does not include any foreign country.

(165) "Storage" shall have the meaning specified in KRS 224.01-010.

(166) "Surface impoundment" means a facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(167) "Tank" means a stationary device designed to contain an accumulation of leachate or solid waste that is constructed primarily of nonearthen materials (for example, wood, concrete, steel, or plastic) which provide structural support.

(168) "Tank system" means a solid waste tank and its associated piping, ancillary equipment and containment system.

(169) "Technical application" means the standard format for applying for a solid waste site or facility permit as specified in 401 KAR 47:160 and 401 KAR 47:190.

(170) "Termination" shall have the meaning specified in KRS 224.01-010.

(171) "Transfer facility" shall have the meaning specified in KRS 224.01-010.

(172) "Transport vehicle" means a motor vehicle or rail car used

for the transportation of cargo by any mode. Each cargo-carrying body is a separate transport vehicle.

(173) "Transportation" shall have the meaning specified in KRS 224.01-010.

(174) "Trenching or burial operation" means the placement of sewage sludge or septic tank pumpings in a trench or other natural or manmade depression and the covering with soil or other suitable material at the end of each operating day such that the waste does not migrate to the surface.

(175) "Underground drinking water source" means:

(a) An aquifer supplying drinking water for human consumption; or

(b) An aquifer in which the groundwater contains less than 10,000 mg/l total dissolved solids.

(176) "Underground tank" means a device meeting the definition of "tank" in this section whose entire surface area is totally below the surface of and covered by the ground.

(177) "Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of managing or processing solid waste without posing a threat of release of waste to the environment.

(178) "Unit" shall have the same meaning as "Solid Waste Unit".

(179) "Universal collection" shall have the meaning specified in KRS 224.01-010.

(180) "Unsaturated zone" shall have the same meaning as "Zone of aeration".

(181) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(182) "Vessel" means any watercraft used or capable of being used as a means of transportation on the water.

(183) "Washout" means the carrying away of waste by waters as a result of flooding.

(184) "Waste boundary" means:

(a) The outermost perimeter of the waste (projected in the horizontal plane) as it would exist at completion of the disposal activity; or

(b) An alternative boundary for a solid or special waste disposal facility which may be used in lieu of paragraph (a) when the cabinet finds that such a change would not result in the contamination of groundwater which may be needed or used for human consumption. Such a finding shall be based on an analysis and consideration of all the factors identified in the following subparagraphs of this paragraph that are relevant:

1. The hydrogeological characteristics of the facility and surrounding land including any natural attenuation and dilution characteristics of the aquifer;

2. The volume and physical and chemical characteristics of the leachate;

3. The quantity, quality, and direction of flow of groundwater underlying the facility;

4. The proximity and withdrawal rates of groundwater users;

5. The availability of alternative drinking water supplies;

6. The existing quality of the groundwater, including other sources of contamination and their cumulative impacts on the groundwater; and

7. Public health, safety, and welfare effects.

(185) "Waste disposal facility" shall have the same meaning as KRS 224.40-310.

(186) "Waste management district" shall have the meaning specified in KRS 224.01-010.

(187) "Waste pile" shall have the same meaning as "pile".

(188) "Waste site or facility" shall have the meaning specified in KRS 224.01-010.

(189) "Waste" shall have the meaning specified in KRS 224.01-010.

(190) "Wastewater treatment unit" means a tank which is part of a wastewater treatment facility which is subject to administrative regulation under either Section 402 or Section 307(b) of the Clean Water Act of 1972 and which receives, treats, stores, generates, or accumulates influent wastewater or receives, manages, processes, generates or accumulates wastewater treatment sludge, either of which is a solid waste.

(191) "Water pollution" shall have the meaning specified in KRS 224.01-010.

(192) "Water" or "waters of the Commonwealth" shall have the meaning specified in KRS 224.01-010.

(193) "Well" means any shaft or pit dug or bored into the earth, generally of cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(194) "Wetlands" means land that has a predominance of hydric soils and is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(195) "Zone of aeration" means that region of the soil or rock between the land surface and the nearest saturated zone in which the interstices are occupied partially by air.

(196) "Zone of incorporation" means the depth to which the soil on a landfarm is plowed, tilled, or otherwise designed to receive waste.

(197) "Zone of saturation" means that part of the earth's crust containing groundwater in which all voids, large and small, are filled with liquid.

Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by context, acronyms and abbreviations used in 401 KAR Chapter 48 shall have the meaning as identified in Table 1 of this administrative regulation.

Table 1. Acronyms and Abbreviations

ASTM	American Society for Testing Materials
CFR	Code of Federal Regulations
CWA	Clean Water Act, as amended
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980
DEP	Kentucky Department for Environmental Protection
EPA	United States Environmental Protection Agency
KAR	Kentucky Administrative Regulation
kg	Kilogram
KPDES	Kentucky Pollution Discharge Elimination System
KRS	Kentucky Revised Statute
l	Liter
MCL	Maximum Contaminant Level
mg	milligram
NPDES	National Pollutant and Discharge Elimination System
OSHA	U.S. Occupational Safety and Health Administration
PCB	Polychlorinated biphenyl
POTW	Publicly owned treatment works
PSD	Prevention of significant deterioration
SCS	Soil Conservation Service
U.S. EPA	United States Environmental Protection Agency
USDA	United States Department of Agriculture

[Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or other administrative regulations of 401 KAR Chapter 48, or otherwise specifically indicated by context, terms in KRS Chapter 224 and 401 KAR Chapter 48 shall have the meanings given in this administrative regulation.

(1) "Active life" means the period from the initial receipt of waste at a waste site or facility until the cabinet receives certification of final closure.

(2) "Administrator" means the administrator of the United States Environmental Protection Agency, or his designee.

(3) "Airport" means public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

(4) "Application" means the form approved by the cabinet for applying for a permit, including any additions, revisions or modifications and any narrative and drawings required by 401 KAR Chapters 47 or 48.

(5) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(6) "Bird hazard" means an increase in the likelihood of bird or aircraft collisions that may cause damage to the aircraft or injury to its occupants.

(7) "Cation exchange capacity" means the sum of exchangeable cations a soil can absorb expressed in milliequivalents per 100 grams of soil as determined by sampling the soil to the depth of cultivation or solid waste placement, whichever is greater, and analyzing by the summation method for distinctly acid soils or the sodium acetate method for neutral, calcareous, or saline soils.

(8) "Cell" means a portion of any landfill which is isolated, usually by means of an approved barrier.

(9) "Certification" means a statement of professional opinion based upon knowledge and belief.

(10) "Closure care" or "postclosure" means the routine care, maintenance, monitoring, and any required corrective action of a special waste or solid waste disposal site or facility following certification of closure until the applicable requirements are met.

(11) "Contaminate" means introduce a substance that would cause:

(a) The concentration of that substance in the groundwater to exceed the maximum contaminant level specified in 401 KAR 30:031, Sections 5 and 6 of 401 KAR 47:030, or Section 8 of 401 KAR 34:060; or

(b) An increase in the concentration of that substance in the groundwater where the existing concentration of that substance exceeds the maximum contaminant level specified in 401 KAR 30:031, 401 KAR 47:030, Section 8 of 401 KAR 34:060; or

(c) For substances that do not have an established maximum contamination level, a significant increase above established background levels.

(12) "Contamination" means the degradation of naturally occurring water, air, or soil quality either directly or indirectly as a result of human activities. The term includes substances that contaminate water, air, or soil.

(13) "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in the event of a fire, explosion, or release of waste or waste constituents into the environment which has the potential for endangering human health and the environment. Financial planning to identify resources for initiation of such action is a part of contingency plan development.

(14) "Cover material" means soil or other suitable material that is spread and compacted on the top and side slopes of disposed waste in order to control disease vectors, gases, erosion, fires, and infiltration of precipitation or run on; support vegetation; provide trafficability; or assure an aesthetic appearance.

(15) "Director" means the director of the cabinet's Division of Waste Management.

(16) "Disease vector" means all insects, birds or gnawing animals such as rats, mice or ground squirrels, which are capable of transmitting pathogens.

(17) "Explosive gas" means methane (CH₄).

(18) "Facility" means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of waste. A facility may consist of several treatment, storage, or disposal operational units, such as one (1) or more landfills, surface impoundments, or combination of them.

(19) "Facility structures" means any buildings and sheds or utility or drainage lines on the solid waste site or facility.

(20) "Final closure" means the approved closure of a solid waste site or facility in accordance with 401 KAR 30:031, 401 KAR 47:030, and the applicable requirements of 401 KAR 48:060, 401 KAR 48:090, 401 KAR 48:170, or 401 KAR 48:200.

(21) "Floodplain" means areas adjoining inland waters that are inundated by the base flood, unless otherwise specified in 401 KAR 30:031 or 401 KAR 47:030, and includes:

(a) "100 year flood plain" means any land area which is subject to a one (1) percent or greater chance of flooding in any given year from any source.

(b) "100 year flood" means a flood that has a one (1) percent chance of being equalled or exceeded in any given year.

(c) "Floodway" means the channel of the waterway, stream or river and that portion of the adjoining floodplain which provides for passage of the 100 year flood flow without increasing the floodwater depth across the 100 year floodplain by more than one (1) foot.

(22) "Food chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(23) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.

(24) "Free liquids" means liquids that readily separate from the solid portion of a waste under ambient temperature and pressure.

(25) "Groundwater" means water that is in the zone of perennial saturation. It is differentiated from water held in the soil, from water in downward motion under the force of gravity in the perennially unsaturated zone, and from water held in chemical or electrostatic bondage. It is synonymous with the term "phreatic water".

(26) "Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.

(27) "Holocene" means the most recent epoch of the quaternary period, extending from the end of the Pleistocene to the present.

(28) "Kart terrain" means a type of topography where limestone, dolomite or gypsum is present and is characterized by naturally occurring closed topographic depressions or sinkholes, caves, disrupted surface drainage, and well developed underground solution channels formed by dissolution of these rocks by water moving underground.

(29) "Lateral expansion" means a horizontal expansion of the waste boundaries of an existing or solid waste landfill unit.

(30) "Leachate" means any liquid, including any suspended components in the liquid, that has percolated through or drained from waste.

(31) "Liner" means a continuous layer of natural or man made material, beneath or on the sides of a waste site or facility, including but not limited to a waste pile, surface impoundment, landfill, or landfill cell, or beneath or on the sides of a waste site or facility which restricts the movement of the wastes, waste constituents, or leachate.

(32) "Lower explosive limit" means the lowest percent by volume of a mixture of explosive gases which will propagate a flame in air at twenty five (25) degrees Celsius and atmospheric pressure.

(33) "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.

(34) "Monitoring well" means a well used to obtain water samples for water quality and quantity analysis and groundwater levels.

(35) "Open burning" means the combustion of any material or solid waste without:

(a) Control of combustion air to maintain adequate temperature for efficient combustion;

(b) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(c) Control of emission of the gaseous combustion products.

(36) "Operational plan" means the approved plan of operations filed with the cabinet which describes the method of operation that the permittee will use in the treatment, storage, and disposal of waste.

(37) "Operator" means any person responsible for overall operation of an on-site or off-site waste facility, including any private contractor conducting operational activities at a federal facility.

(38) "Owner" means any person who owns an on-site or off-site waste facility, or any part of a facility.

(39) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface runoff. The term does not include "intermittent stream" or "ephemeral stream".

(40) "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management administrative regulations. The term "permit" includes "permit by rule", "registered permit by rule", "research, development, and demonstration permit", and "emergency permit". However, the term "permit" does not include "draft permit" or "proposed permit".

(a) "Emergency permit" means a permit issued by the cabinet to temporarily manage, process, or dispose of a solid waste in accordance with the provisions of Section 2 of 401 KAR 47:150.

(b) "Permit by rule" means authorization allowing certain classes of sites or facilities, as specified in 401 KAR 47:150, to manage waste consistent with 401 KAR Chapters 30, 47, and 48, without submission of a registration or permit application to the cabinet.

(c) "Registered permit by rule" means that certain classes of solid waste sites or facilities, as specified in 401 KAR 47:080, have a permit as provided in 401 KAR 47:110 or 401 KAR 48:200.

(d) "Research, development, and demonstration permit" means a solid waste treatment or disposal facility using innovative and experimental technology as specified in 401 KAR 47:150.

(41) "Permittee" means any person holding a valid permit issued by the cabinet to manage, treat, store, or dispose of waste.

(42) "Personnel" or "facility personnel" means all persons who work at or oversee the operations of a waste facility, and whose actions or failure to act may result in noncompliance with the requirements of the waste management administrative regulations.

(43) "Point source" means any discernible, confined, and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(44) "Run off" means any rainwater, leachate, or other liquid that drains overland from any part of a facility.

(45) "Run on" means any rainwater, leachate, or other liquid that drains overland onto any part of a facility.

(46) "Scavenging" means the removal of waste materials from a waste management site or facility in a manner deemed by the cabinet to be dangerous to the health and safety of any person.

(47) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the waste facility or activity.

(48) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.

(49) "Solid waste site or facility" means any place at which solid waste is managed, processed or disposed by landfilling, incineration, landfarming or any other method. The term includes the following:

(a) "Construction/demolition debris landfill" means a solid waste site or facility for the disposal of solid waste resulting from the construction, remodeling, repair, and demolition of structures and roads, and for the disposal of uncontaminated solid waste consisting of vegetation resulting from land clearing and grubbing, utility line maintenance, and seasonal and storm-related cleanup. The technical requirements for construction/demolition debris landfills are found in 401 KAR 47:080, 401 KAR 48:050, and 401 KAR 48:060.

(b) "Collection box" shall have the meaning specified in KRS 224.01-010.

(c) "Contained landfill" means a solid waste site or facility that accepts for disposal solid waste. The technical requirements for contained landfills are found in 401 KAR 47:080, 401 KAR 48:050, and 401 KAR 48:070 to 401 KAR 48:090.

(d) "Convenience center", as defined at KRS 224.01-010.

(e) "Disposal facility" means a facility or part of a facility at which solid waste is intentionally placed into or on any land or water and at which waste will remain after closure.

(f) "Incinerator" means any enclosed device using controlled flame combustion for burning solid waste.

(g) "Injection well" means a well into which fluids are injected to achieve subsurface emplacement.

(h) "Landfarming facility" means a facility for land application of sludges or other solid waste by any method for purposes of disposal. It can be on any piece or pieces of land and may improve the physical and chemical qualities of the land for agricultural purposes, but does not alter the topography of the application area as revealed by contours and will not disturb the soil below three (3) feet from the surface.

(i) "Management facility" means a facility or part of a facility at which solid waste is held for a temporary period, at the end of which solid waste is processed, disposed or managed elsewhere.

(j) "Miscellaneous unit" means a solid waste management unit where waste is disposed of and that is not a container, tank, surface impoundment, pile, landfarming unit, landfill, incinerator, underground injection well with appropriate technical standards under 40 CFR Part 146, or unit eligible for a research, development, and demonstration permit under Section 3 of 401 KAR 47:150.

(k) "Municipal solid waste disposal facility", as defined at KRS 224.01-010.

(l) "Pile" or "waste pile" means any noncontainerized accumulation of nonflowing solid waste that is used for processing or management.

(m) "Processing facility" means a facility or part of a facility using any method, technique or procedure, including neutralization, designed to change the physical, chemical, or biological character or composition of any solid waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste less hazardous, safer to transport, store, or dispose of, or amenable for recovery, amenable for handling or reduced in volume.

(n) "Recycling center" means a facility or a part of a facility at which solid waste is received and managed in a manner amenable for the recovery of material or energy. This term does not include recycling facilities.

(o) "Recycling facility" means a facility or a part of a facility at which solid waste is processed to reclaim material or energy from the solid waste.

(p) "Residual landfill" means a facility for the disposal of specific solid wastes, including special waste, which is located, designed, constructed, operated, maintained, and closed in conformance with 401 KAR 30:031 and 401 KAR 47:030 and which receives a case by case design review by the cabinet.

(q) "Sanitary landfill" means a facility for the disposal of solid waste that complies with 401 KAR 30:031 and 401 KAR 47:030.

(r) "Surface impoundment" means a facility or part of a facility which is a natural topographic depression, manmade excavation, or

diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(s) "Tank" means a stationary device designed to contain an accumulation of leachate or liquid solid waste which is constructed primarily of nonearthen materials (for example, wood, concrete, steel, or plastic) which provide structural support.

1. "Aboveground tank" means a device meeting the definition of "tank" in this subsection and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

2. "Component" means either the tank or ancillary equipment of a tank system.

3. "In ground tank" means a device meeting the definition of "tank" in this subsection whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

4. "On ground tank" means a device meeting the definition of "tank" in this subsection and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

5. "Tank system" means a solid waste tank and its associated piping, ancillary equipment, and containment system.

6. "Underground tank" means a device meeting the definition of "tank" in this subsection whose entire surface area is totally below the surface of and covered by the ground.

7. "Unfit for use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of managing or processing solid waste without posing a threat of release of waste to the environment.

(t) "Transfer facility" shall have the meaning specified in KRS 224.01-010.

(u) "Unit" or "solid waste unit" means a contiguous area of land on or in which solid waste is placed, or the largest area in which there is significant likelihood of mixing waste constituents in the same area. Examples of solid waste units include a surface impoundment, a waste pile, a land processing area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system, and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

(v) "Wastewater treatment unit" means a tank which is part of a wastewater treatment facility which is subject to administrative regulation under either Section 402 or Section 307(b) of the CWA of 1972 and which receives, treats, stores, generates, or accumulates influent wastewater or receives, manages, processes generates or accumulates wastewater treatment sludge, either of which is a solid waste.

(w) 1. "Inert landfill" means a facility for the proper disposal of inert, nonsoluble and nonputrescible solid waste, including construction materials, certain industrial or special wastes, and other waste material with specific approval from the cabinet. Certain putrescible wood product wastes (such as cardboard, paper, sawdust, wood chips, and tree trimmings) may be considered by the cabinet for disposal at inert landfills.

2. "Residential landfill" means a facility for the proper disposal of solid waste including residential wastes, commercial wastes, institutional wastes, and those sludges, industrial or special wastes with specific approval from the cabinet.

(50) "State" means any of the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands or Guam but does not include any foreign country.

(51) "Uppermost aquifer" means the geologic formation nearest

~~the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.~~

~~(52) "Vessel" means any watercraft used or capable of being used as a means of transportation on the water.~~

~~(53) "Washout" means the carrying away of waste by waters as a result of flooding.~~

~~(54) "Well" means any shaft or pit dug or bored into the earth, generally of cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.~~

Section 2. References. (1) The following documents are hereby incorporated by reference:

(a) 40 CFR 260.11 as of February 21, 1991; and

(b) Appendix X of 40 CFR 261 as of January 14, 1985.

(2) The documents referenced in subsection (1) of this section may be obtained from the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m. eastern time, Monday through Friday, excluding state holidays.]

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. upon request, the cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221.

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: This regulation does not affect any entities, because it only defines terms used in the chapter. The regulation was promulgated to comply with KRS 13A.222.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical

area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First Year: The cabinet will experience no additional costs or savings by promulgating the amendments to this regulation.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: There will be no additional factors affecting costs.

b. Reporting and paperwork requirements: There will be no extra paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on the state and local revenue with the promulgation of this regulation.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No costs are imposed with the promulgation of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: There were no other alternatives that would achieve compliance with KRS 13A.222.

8. Assessment of expected benefits of the administrative regulation: The benefit is having the definitions clearly stated at the beginning of each chapter.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Not applicable since no requirements are imposed.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Tiering is applied to all of Kentucky's waste regulations, based on type and quantity of waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS

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Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments establish definitions of solid waste terms and clarifies certain definitions. This regulation is necessary to maintain consistency between state and federal programs. In addition, the regulation has been modified to reflect regulation construction specified in KRS 13A.222.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that manages solid waste.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. This administrative regulation establishes definitions for all terms within 401 KAR Chapter 48. These terms are assimilated from existing federal regulatory definitions and existing statutory definitions where applicable.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): Because this administrative regulation only establishes definitions for 401 KAR Chapter 48, this administrative regulation will not affect state, county, or local expenditures.

Other Explanation: None

JUSTICE CABINET Division of Charitable Gaming (Amendment)

500 KAR 11:001. Definitions.

RELATES TO: KRS 238.500 to 238.995

STATUTORY AUTHORITY: KRS 238.515(9)

NECESSITY AND FUNCTION: KRS Chapter 238 authorizes the Division of Charitable Gaming to adopt administrative regulations to carry out the provisions of the chapter. This administrative regulation establishes definitions of terms used throughout 500 KAR Chapter 11.

Section 1. Definitions. The following definitions describe terms used in administrative regulations found in 500 KAR Chapter 11. Terms not defined below shall have the meanings given to them by KRS 238.505 or if not so defined, the meanings attributed by common

use.

(1) "Bet block" means an area which indicates the dollar amount of the wager.

(2) "Card" means a card or paper containing five (5) rows of five (5) squares with twenty-four (24) preprinted numbers and a free center space, and the letters, "B", "I", "N", "G", "O" printed in order over the five (5) columns.

(3) ~~[(2)]~~ "Cash" means currency, coinage or a negotiable instrument.

(4) "Conditioning" means a restatement of how many numbers or combination of numbers are being selected by the players, the way in which they are wagered, and the corresponding dollar amounts wagered.

(5) ~~[(3)]~~ "Covered" means daubed or smeared with indelible ink.

(6) ~~[(4)]~~ "Deal" means each separate game or series of charity game tickets with the same serial number.

(7) ~~[(5)]~~ "Designator" means an item used in the number selection process, such as a ping pong ball, upon which bingo letters and numbers are imprinted.

(8) ~~[(6)]~~ "Disposable paper bingo card" means a nonreusable, paper bingo card bearing preprinted numbers and assembled in multiple card sheet, single sheet, pad or packet form.

(9) "Draw ticket" means a ticket upon which the numbers randomly selected are marked on a blank ticket as the numbers are selected.

(10) "EPROM" means Erasable Programmable ROM.

(11) "Exception log" means a record documenting any prize payouts which have not been authorized by the computer.

(12) ~~[(7)]~~ "Face" means a card or paper containing five (5) rows of five (5) squares with twenty-four (24) preprinted numbers and a free center space, and the letters "B", "I", "N", "G", "O" printed in order over the five (5) columns.

(13) ~~[(8)]~~ "Flare" means a piece of paper or cardboard or similar material which bears printed information relating to the number of prizes to be awarded and the specific prize amounts in a particular deal of charity game tickets.

(14) "Inside ticket" means a blank Keno ticket constructed with eighty (80) blocks containing the printed numbers one (1)-eighty (80) and containing a bet block.

(15) "Keno" means a numbers game in which participants choose from one (1) to ten (10) numbers from a pool of eighty (80) numbers, and the winner(s) and their prize(s) are determined on the basis of correctly matching their numbers to the twenty (20) numbers generated for each game.

(16) "Keno equipment" means electronic selection devices, random number generators and computerized Keno systems/integrated systems of computer hardware and software that generate player tickets, record game outcomes, verify winning tickets, produce management reports and perform other internal audit controls of the Keno operation.

(17) "Keno manager" means the person in charge of the operation of the Keno game.

(18) "Multirace ticket" means a single ticket which allows a player to make the same wager on consecutive games.

(19) "Outside ticket" means a computer generated ticket given to the player which reflects certain game and wagering information.

(20) ~~[(9)]~~ "Perm number" means the number generally printed in the center space of a bingo card that identifies the unique pattern of numbers printed on that card.

(21) "PROM" means programmable ROM.

(22) "Quick pick" means a number selection made for the player by a computer.

(23) "RAM" means random access memory and is the electronic memory that the computer uses to store information.

(24) "Random number generator" means a hardware, software or combination hardware and software device for generating number values that exhibit characteristics of randomness.

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(25) "Regrade" means to manually recalculate the prize payout of a winning ticket according to the printed pay schedule.

(26) "ROM" means read only memory which is the electronic component used for storage of nonvolatile information in Keno equipment and provides instructions the computer needs to begin its operations each time the computer is turned on. The term includes PROM and EPROM.

(27) [(40)] "Selection device" means a device that may be operated manually or automatically and is used to randomly select bingo numbers.

(28) [(44)] "Serial number" means a unique number printed by the manufacturer on each card in a set and which is unique to that set.

(29) [(42)] "Series number" means the number of unique card faces contained in a set.

(30) [(43)] "Set" means a specific group of cards from the same product line which are the same color, border pattern and imprinted with the same serial number. A set of cards may include more than one (1) series of cards or faces.

(31) "Transaction log" is a record either retained in the computer's memory or printed out by the computer which contains the same information printed on each outside ticket.

(32) [(44)] "Verification book" means a book compiled by the manufacturer of bingo cards that lists the unique pattern of numbers on each card by perm number and is used to verify the authenticity of a winning card.

(33) "Way ticket" means a single ticket which allows a player to wager on the combination of groups of numbers in various ways designated by the player.

(34) [(45)] "Year" means calendar year.

E. DANIEL CHERRY, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Friday, August 23, 1996, at 9 a.m. at the Division of Charitable Gaming Conference Room, Suite 100, Bush Building, 403 Wapping Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by August 18, 1996, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost therefore to be borne by the requesting party. If you do not wish to attend the public hearing, you may submit comments on this administrative regulation by August 23, 1996. Send written notification to attend the public hearing or comments on this administrative regulation to: Sarah M. Jackson, Director, Division of Charitable Gaming, 403 Wapping Street, Bush Building, Suite 100, Frankfort, Kentucky 40601-2639, PH: (502) 564-5528, FAX: (502) 564-6625.

REGULATORY IMPACT ANALYSIS

Contact Person: Sarah M. Jackson

(1) Type and number of entities affected: All licensed manufacturers (currently 16), licensed distributors (currently 55), and licensed charitable organizations (currently 772).

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available

from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Charity Gaming Regulation Account (KRS 238.570(2)).

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: N/A

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is inapplicable.

JUSTICE CABINET Division of Charitable Gaming (Amendment)

500 KAR 11:030. Charity game ticket standards.

RELATES TO: KRS 238.545

STATUTORY AUTHORITY: KRS 238.515(2), (9), 238.545(1), (2)

NECESSITY AND FUNCTION: The Division of Charitable Gaming is authorized to establish reasonable standards for the conduct of charitable gaming and to establish certain standards for charity game ticket construction, distribution and rules of play. This administrative regulation establishes standards for the construction and distribution of charity game tickets and for the conduct of play of charity game tickets.

Section 1. Charity Game Ticket Construction Standards. The following standards shall govern the construction of charity game tickets:

(1) Charity game tickets shall be constructed so that concealed numbers, symbols, or winner protection features cannot be viewed or determined from the outside of the charity game ticket using a high intensity lamp of 500 watts, with or without utilizing a focusing lens.

(2) The deal shall be designed, constructed, glued and assembled in a manner to prevent determination of a winning or losing ticket

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without removing the tabs or otherwise uncovering the symbols or numbers as intended.

(3) Each charity game ticket in a deal shall bear the same serial number. Only one (1) serial number shall be used in a deal. No serial number used in a deal of charity game tickets shall be repeated by the same manufacturer on that same manufacturer's form within a three (3) year period.

(4) The numbers or symbols on a charity game ticket shall be fully visible in the window and shall be placed so that no part of a symbol or number remains covered when the tab is removed. Displacement of the symbol(s) to the left or right in a window may be used for increased game security. Additional security devices or methods, including a laminate underneath a window, may be used by a manufacturer.

(5) The window slits on each charity game ticket shall be perforated on the three (3) cut sides. All charity game tickets shall be glued on all four (4) edges and between each window. The glue shall be of sufficient strength and type to prevent the undetectable separation or delamination of the charity game ticket.

(6) The following information shall be printed on a charity game ticket measuring one and one-fourth (1¼) inches by two and one-fourth (2¼) inches or larger, unopened:

- (a) The name of the manufacturer, or its distinctive logo;
- (b) The name of the game;
- (c) The manufacturer's form number;
- (d) The price per individual charity game ticket, unless accompanied by a flare with that information;
- (e) The unique minimum five (5) digit game serial number, printed on the game information side of the charity game ticket; and
- (f) The number of winners and respective winning numbers or symbols, and specific prize amounts, unless accompanied by a flare with that information.

(7) The following information shall be printed on a charity game ticket measuring less than one and one-fourth (1¼) inches by two and one-fourth (2¼) inches, unopened:

- (a) The name of the manufacturer, or its distinctive logo; and
- (b) The unique minimum five (5) digit game serial number, printed on the game information side of the charity game ticket.

Section 2. Randomization. The following randomization standards shall govern the manufacture of charity game tickets:

(1) The deal shall be assembled so that winning tickets are placed throughout the deal.

(2) The deal shall be assembled and packaged in a manner which prevents isolation of winning tickets from variations in size, the appearance of a cut edge, or other markings of the tickets.

(3) The deal shall be assembled and packaged in a manner which prevents detection of winning tickets through variations in printing graphics or colors.

(4) Winning charity game tickets shall be distributed and mixed among all other charity game tickets in a deal so as to eliminate any pattern between deals, or portions of deals, from which the location or approximate location of any winning charity game ticket may be determined.

(5) The charity game ticket deal shall be assembled so that no placement of winning or losing charity game tickets exists that allows the possibility of prize manipulation.

Section 3. Packaging and Distribution. (1) Each deal's package, box, or other container shall be sealed at the manufacturer's factory with a seal which includes a warning to the purchaser that the deal may have been tampered with if the package, box or other container was received by the purchaser with the seal broken.

(2) A deal's serial number shall be clearly and legibly placed on the outside of the deal's package, box or other container.

(3) Manufacturers shall seal or tape, with a tamper-resistant seal or tape, every entry point into a container of charity game tickets prior

to shipment. The seal or tape shall be constructed to guarantee that should the container be opened or tampered with, such tampering or opening would be easily discernible.

Section 4. Flares. Every deal of charity game tickets shall contain a flare that has printed or affixed on it the following information:

- (1) The name of the game;
- (2) The manufacturer's name or logo;
- (3) The manufacturer's form number;
- (4) The ticket count;
- (5) The prize structure that includes the number of winning charity game tickets by denomination, with their respective winning symbols or number combinations;
- (6) The cost per play; and
- (7) The game serial number.

Section 5. Tracking by Manufacturer. Every manufacturer of charity game tickets shall maintain records sufficient to track each deal of charity game tickets from the manufacturer to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by division staff.

Section 6. Tracking by Distributor. Every distributor of charity game tickets shall maintain records sufficient to track each deal of charity game tickets from purchase by the distributor to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by division staff.

Section 7. Defects. (1) Should a defect in packaging or in the construction of a charity game ticket game be discovered by, or reported to the division, the division shall take immediate steps to notify the manufacturer of the game containing the alleged defect.

(2) Should the division, in consultation with the manufacturer, determine that a defect actually exists, and should the division determine that the defect affects game security or otherwise threatens public confidence in the game, the division may, with respect to deals for use still located within the Commonwealth of Kentucky, require the manufacturer to:

- (a) Recall the deals affected that have not been sold at retail to licensed organizations;
- (b) Recall the deals, by form number, from the distributor level; or
- (c) Issue a total recall of all affected deals.
- (3) In choosing and directing a particular recall from subsection (2) of this section, the division shall be guided in each circumstance by any combination of the following factors:
 - (a) The nature of the defect;
 - (b) Whether the defect affected game security;
 - (c) Whether the defect affected game playability;
 - (d) Whether the defect was limited to a specific number of deals of a particular form number;
 - (e) Whether the defect was easily detectable by a charitable gaming organization, or a suborganization or subordinate organization thereof;
 - (f) Whether the defect was easily detectable by members of the general public;
 - (g) Whether the defect threatens public confidence in the game; or
 - (h) Whether the defect is capable of being used to adversely affect the fair play of the game.

Section 8. Rules of Play. The following rules of play govern the conduct and sale of charity game tickets:

(1) The flare described in Section 4 of this administrative regulation shall be posted by the licensed charitable organization in the vicinity of the deal and in full and complete view of the players while the deal is in play.

(2) Charity game tickets shall not be sold to the public from the

original packing box or container.

(3) If a deal of charity game tickets is received in two (2) or more boxes, packages or containers, all of the charity game tickets from the boxes, packages or containers shall be placed out for play at the same time.

(4) No charity game tickets which have been marked, defaced, altered, tampered with or otherwise constructed in a manner which tends to deceive the public or affect the chances of winning or losing shall be placed into play.

(5) All winning charity game tickets shall have the winning symbol or number defaced or punched by an authorized representative of the charitable organization immediately after redemption.

(6) All winning charity game tickets with a prize value of fifty (50) dollars and above, all seal card winners with a prize value of fifty (50) dollars and above, and all unsold charity game tickets shall be retained by the licensed charitable organization for a period of twelve (12) months to allow auditing by the staff of the division.

(7) All used nonwinning charity game tickets and seal cards, and all winning and unsold charity game tickets and seal cards which have been retained for the required twelve (12) month period, shall be disposed of by burning, shredding, destroying or defacing in some manner to prevent reuse of any charity game ticket or seal card or any portion thereof.

(8) An authorized representative of the charitable organization conducting the event at which charity game tickets are sold shall verify the serial numbers or winner protections for all winning charity game tickets redeemed.

(9) If a deal is not played to completion and there remain unsold winning charity game tickets, the licensed charitable organization conducting the gaming shall sell the remaining charity game tickets on the next appointed date for charitable gaming activities. If no future date is anticipated, the licensed charitable organization shall, after making every effort to sell the entire deal, consider the deal closed or completed, and shall retain all unsold charity game tickets as required in subsection (6) of this section. If no winning charity game tickets remain in the deal, the licensed charitable organization shall consider the deal closed or completed and shall retain unsold charity game tickets as required in subsection (6) of this section. Under no circumstances is a licensed charitable organization other than the licensed charitable organization which initiated the deal to complete play of the deal.

(10) If a seal card from a deal or deals is not played to completion, the licensed charitable organization shall sell the remaining charity game tickets necessary to play out the seal card on the next appointed date for charitable gaming activities. If no future date is anticipated, the licensed charitable organization shall, after making every effort to sell the entire deal, consider the deal closed or completed, and shall retain all unsold charity game tickets as required in subsection (6) of this section. Under no circumstances is a licensed charitable organization other than the licensed charitable organization which initiated the seal card from the deal to complete play of the deal or the seal card.

(11) No individual involved in any capacity in the conduct of a charitable gaming event at which charity game tickets are sold shall be permitted to purchase or play charitable game tickets.

(12) No charity game ticket shall be sold to the public at a price different than that printed on the charity game ticket or upon the flare which accompanies the charity game ticket.

Section 9. Automated Charity Game Ticket Dispensers. (1) Approval of a automated charity game ticket dispensers. No automated charity game ticket dispenser may be sold, leased or otherwise furnished to any person in the state unless a dispenser which is identical to the dispenser intended to be sold, leased or otherwise furnished has been first presented to the division by its manufacturer, at the manufacturer's expense, for review by the division or has been certified by an independent testing laboratory that the dispenser

satisfies the manufacturing requirements set forth in subsection (2) of this section, and the dispenser has been approved by the division. If granted, approval extends only to the specific dispenser model approved, and any modification shall first be approved by the division. The division may keep the dispenser for further testing and evaluation for as long as the Division deems necessary.

(2) Manufacturing requirements. Each automated charity game ticket dispenser shall:

(a) Contain a three (3) prong ground and surge protector, and shall be capable of withstanding static electricity;

(b) Contain columns which accommodates different sized charity game tickets;

(c) Be constructed so that customers can see how many charity game tickets remain within the dispenser or have resettable counters visible to the customer indicating the number of charity game tickets left in each column of the dispenser;

(d) Have an outlet or tray to catch dispensed charity game tickets;

(e) Accurately dispense the correct number of charity game tickets;

(f) Contain one (1) or more player buttons on the front of the dispenser to dispense charity game tickets when pressed;

(g) Have a minimum of two (2) and a maximum of eight (8) columns in a separate locking compartment;

(h) Contain a luminated electronic display to display the value of the currency;

(i) Be capable, in the event a malfunction occurs or the electrical power is interrupted after currency has been validated, of accurately redisplaying the value of the currency after the malfunction or power is restored;

(j) Not dispense any credits or redeem a winning charity game ticket;

(k) If using bill acceptors or similar devices that do not return change, clearly disclose that fact to the customer;

(l) Not have a video screen or produce audio sounds except for security alarms;

(m) Not resemble a slot machine or other gambling device;

(n) Contain the manufacturer's name, dispenser's serial number and model number, and date of manufacture, all of which shall be permanently affixed to the side of the dispenser;

(o) Have an on/off switch in an inconspicuous location on the exterior of the dispenser;

(p) Not record test sales of charity game tickets or currency acceptances on the dispenser's accounting meters;

(q) Contain a nonresettable accounting meter for total currency validated and for total of charity game tickets dispensed and shall be capable of retaining this information for six (6) months after power has been disconnected;

(r) Contain an EPROM microchip which holds the dispenser's programming code and which is identical in all respects to the manufacturer's EPROM microchip approved by the division;

(s) Contain a RAM or EPROM microchip equipped with a RAM microchip which shall maintain the same information as required in paragraph (q) of this subsection for six (6) months after power has been disconnected and which is installed with a tamper-proof seal inside the dispenser;

(t) Automatically discontinue operation when any non-resettable accounting meter, RAM microchip, or EPROM microchip is disconnected;

(u) Contain at least one (1) electronic currency validator which shall:

1. Only validate United States currency;

2. Not validate currency in denominations in excess of twenty (20) dollars;

3. Transmit the value of validated currency to the charity game ticket dispenser;

4. Be equipped with mechanisms to ensure that charity game tickets will not be dispensed unless the currency was validated and

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retained;

5. Be capable of preventing acceptance of known counterfeit currency;

6. Return any invalid currency to the player;

7. Have at least one (1) removable stacker box capable of stacking bills or a removable drop box contained in a separate locked compartment; and

8. Automatically discontinue accepting or validating currency if a malfunction occurs or if electrical power to the dispenser or currency validator is interrupted.

(3) Automated charity game ticket dispensing limitations. The following limitations apply to the use of automated charity game ticket dispensers:

(a) No charitable gaming organization shall use the dispenser until any previous user has removed its charity game tickets and money from the dispenser;

(b) Each charitable organization operating the dispenser shall place upon the dispenser an identification label which displays the organization's name and license number;

(c) The keys to open the locked doors to the dispenser's ticket dispensing area and cash box shall be solely in the possession and control of the designated chairperson of the charitable organization conducting the charitable gaming session;

(d) No person shall put out any charity game ticket deal in a dispenser unless the entire deal shall be sold solely from the dispenser. All charity game tickets in any one column shall have the same serial number. Each charity game ticket deal shall be placed in a minimum of two (2) columns to ensure randomization;

(e) No licensee may display, use or otherwise furnish a dispenser which has in any manner been tampered with or which otherwise may deceive the public or affect a person's chances of winning;

(f) No charity game ticket deal shall be placed in the dispenser until the entire deal of charity game tickets previously in the dispenser has been played out or permanently removed; and

(g) No charity game tickets once placed in the dispenser shall be removed from the dispenser, except for those charity game tickets actually played by consumers, removed by division representatives or law enforcement agencies, temporarily removed during necessary repair and maintenance or removed at the end of the gaming session.

(4) Inspection. The division or its authorized representatives may examine and inspect any automated charity game ticket dispenser. The examination and inspection shall include immediate access to the dispenser and unlimited inspection of all parts of the dispenser.

(5) Recordkeeping.

(a) Each licensed charitable organization shall maintain the following information in connection with its use of an automated charity game ticket dispenser:

1. Date of purchase or lease of each dispenser;

2. Model and serial number of each dispenser;

3. Purchase or lease price of each dispenser;

4. Name, address and license number of the distributor from whom the dispenser was purchased, leased or otherwise furnished; and

5. A record of all maintenance and repairs relating to the dispenser.

(b) Manufacturers and distributors shall maintain the following information in connection with each sale or lease of a dispenser:

1. Date of sale or lease;

2. Quantity sold or leased;

3. Cost per dispenser;

4. Model and serial number of each dispenser; and

5. Name, address and license number of the purchaser or lessee;

(c) All records, reports and receipts relating to dispenser sales, maintenance and repairs required to be maintained shall be retained for a period of three (3) years for examination by the division.

(6) Defects. If the division detects or discovers any defect or malfunction with the dispenser, which is not temporary in nature, that

affects the integrity or security of the charity game ticket game, the division may direct the manufacturer, distributor or organization to cease the sale, lease or use of the dispenser, as applicable, and may require the manufacturer to correct the defect, malfunction or problem or recall the dispenser immediately upon notification by the division to the manufacturer. If the manufacturer, distributor or organization detects or discovers any defect or malfunction with the dispenser, which is not temporary in nature, such entity shall immediately remove the dispenser from use and notify the division of such action.

E. DANIEL CHERRY, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Friday, August 23, 1996, at 9 a.m. at the Division of Charitable Gaming Conference Room, Suite 100, Bush Building, 403 Wapping Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by August 18, 1996, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost therefore to be borne by the requesting party. If you do not wish to attend the public hearing, you may submit comments on this administrative regulation by August 23, 1996. Send written notification to attend the public hearing or comments on this administrative regulation to: Sarah M. Jackson, Director, Division of Charitable Gaming, 403 Wapping Street, Bush Building, Suite 100, Frankfort, Kentucky 40601-2639, PH: (502) 564-5528, FAX: (502) 564-6625.

REGULATORY IMPACT ANALYSIS

Contact Person: Sarah M. Jackson

(1) Type and number of entities affected: All licensed manufacturers (currently 16), licensed distributors (currently 55), and licensed charitable organizations (currently 772).

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None known.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None known.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: The administrative regulation imposes on licensed manufacturers, distributors and charitable organizations the duty of retaining certain information related to the sale, lease or use of automated charity game ticket dispensers for a specific time period, and this requirement will call for limited paperwork or recordkeeping functions on these entities. Moreover, the charitable organizations will be required to take steps to ensure continuing compliance with the limitations established by the administrative regulation. Finally, manufacturers will be required to demonstrate that their dispensers comply with the manufacturing requirements contained in this regulation.

2. Second and subsequent years: The administrative regulation imposes on licensed manufacturers, distributors and charitable organizations the duty of retaining certain information related to the sale, lease or use of automated charity game ticket dispensers for a specific time period, and this requirement will call for limited paper-

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work or recordkeeping functions on these entities. Moreover, the charitable organizations will be required to take steps to ensure continuing compliance with the limitations established by the administrative regulation. Finally, manufacturers will be required to demonstrate that their dispensers comply with the manufacturing requirements contained in this regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Some increase in staff time is expected as part of the process of approving dispensers.

2. Continuing costs or savings: Some increase in staff time is expected as part of the process of approving dispensers, which is expected to decrease over time.

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: Reporting will be required for manufacturers seeking approval of the use of their dispensers. In addition, manufacturers, distributors and charitable organizations will be required to retain certain information relating to the sale, lease and use of the dispensers. Finally, to the extent charitable organizations or other entities report defects in the dispensers, the Division of Charitable Gaming will have reporting requirements associated with informing the distributors or manufacturers of the reports.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Charitable Gaming Regulatory Account (KRS 238.570(2)).

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None known.

(b) Kentucky: None known.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Division of Charitable Gaming, in devising these automated charity game ticket dispenser standards, relied heavily on the standards adopted by other states which authorize the use of such dispensers.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applicable, as statutory authority does not provide for tiering.

DEPARTMENT OF CORRECTIONS (Amendment)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the commissioner to promulgate administrative regulations for the proper administration of the

department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation conforms with those provisions.

Section 1. Incorporation by Reference. (1) "Department of Corrections Policies and Procedures", (July 11 [June 13], 1996 Edition), Department of Corrections, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) Department of Corrections Policies and Procedures include:

- 1.1 Legal Assistance for Corrections Staff
- 1.2 News Media
- 01-04-01 The operation of Contracted Adult Correctional Facilities
- 1.6 Extraordinary Occurrence Reports
- 1.9 Institutional Duty Officer
- 1.11 Population Counts and Reporting Procedures
- 1.12 Operation of Motor Vehicles by Department of Corrections Employees
- 2.1 Inmate Canteen
- 2.2 Warden's Fund
- 2.10 Surplus Property
- 3.12 Institutional Staff Housing
- 4.2 Staff Training and Development
- 4.3 Firearms and Chemical Agents Training
- 6.1 Open Records Law
- 7.2 Asbestos Abatement
- 8.1 Occupational Exposure to Bloodborne Pathogens
- 8.4 Emergency Preparedness
- 9.1 Use of Force
- 9.4 Transportation of Inmates to Funerals or Bedside Visits
- 9.5 Execution
- 9.6 Contraband
- 9.7 Storage, Issue and Use of Weapons Including Chemical Agents
- 9.8 Search Policy
- 9.9 Transportation of Inmates
- 9.10 Security Inspections
- 9.11 Tool Control
- 9.18 Informants
- 9.19 Found Lost or Abandoned Property
- 10.2 Special Management Inmates
- 10.3 Safekeepers
- 10.4 Special Needs Inmates
- 11.2 Nutritional Adequacy of the Diet for Inmates
- 11.3 Special Diet Procedures
- 13.1 Pharmacy Policy and Formulary
- 13.2 Health Maintenance Services
- 13.3 Medical Alert System
- 13.4 Health Program Audits
- 13.5 Acquired Immune Deficiency Syndrome
- 13.6 Sex Offender Treatment Program
- 13.7 Involuntary Psychotropic Medication Policy
- 13.9 Dental Services
- 14.2 Personal Hygiene Items
- 14.3 Marriage of Inmates
- 14.4 Legal Services Program
- 14.6 Inmate Grievance Procedures
- 15.1 Hair and Grooming Standards
- 15.2 Offenses and Penalties (Amended 7/11/96)
- 15.3 Meritorious Good Time
- 15-05-01 Restoration of Forfeited Good Time
- 15.6 Adjustment Procedures and Programs
- 15.7 Inmate Account Restriction

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15.8	Unauthorized Substance Abuse Testing	27-12-07	Employment, Education/Vocational Referral
16.1	Inmate Visits	27-12-08	Supervision Plan
16.2	Inmate Correspondence	27-12-09	Casebook
16.3	Telephone Calls	27-12-10	Guidelines for Monitoring Supervision Fee
16.4	Inmate Packages (Amended June 13, 1996)	27-12-11	Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority
17-01-01	Inmate Personal Property	27-12-12	Other Financial Obligations (Not Ordered by Releasing Authority)
17.2	Assessment Center Operations	27-12-13	Community Service Work
17.3	Controlled Intake of Inmates	27-12-14	Client Travel Restrictions
18.1	Classification of the Inmate	27-13-01	Drug and Alcohol Testing of Offenders
18.5	Custody and Security Guidelines	27-13-02	Alcohol Detection
18.6	Classification Document (Deleted 7/11/96)	27-14-01	Interstate Compact Transfers
18.7	Transfers	27-14-02	Interstate Compact Out-of-state Probation and Parole Violation
18.9	Out-of-state Transfers	27-15-01	Supervision Report; Violations, Unusual Incidents
18-10-01	Preparole Progress Reports	27-16-01	Search; Seizure; Chain of Custody; Disposal of Evidence
18.11	Kentucky Correctional Psychiatric Center Transfer Procedures	27-17-01	Absconder Procedures
18.12	Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill	27-18-01	Probation and Parole Issuance of Detainer/Warrant
18.13	Population Categories	27-19-01	Preliminary Revocation Hearing
18.15	Protective Custody	27-20-01	Division of Probation and Parole Controlled Intake Program
18.17	Interstate Agreement on Transfers	27-20-02	Prisoner Intake Notification
18.18	International Transfer of Inmates	27-20-03	Prisoner Status Change
19.1	Government Services Projects	27-21-01	Apprehension and Transportation of Probation and Parole Violators
19.2	Community Services Projects	27-22-01	Fugitive Unit - Apprehensions
19.3	Inmate Wage Program	27-22-02	Fugitive Unit - Transportation of Fugitives
20.1	Educational Programs and Educational Good Time	27-23-01	In-state Transfer
21.1	Staffing Pattern for the First Incarceration Shock Treatment Program (FIST)	27-24-01	Closing Supervision Report
21.2	Phase I: Program Selection Assessment Criteria	27-24-02	Reinstatement of Clients to Active Supervision
21.3	Program Schedule - Phase II and Phase III	27-25-01	Application for Final Discharge from Parole
21.4	Platoon Size and Composition	27-26-01	Assistance to Former Clients and Dischargees
21.5	Physical Conditions Program Component	27-27-01	Restoration of Civil Rights
21.6	Group and Individual Counseling	27-28-01	Firearms/Explosives: Application for Relief from Disability
21.7	Drug and Alcohol Abuse Counseling and Treatment	27-29-01	Parole Review Dates Modification
21.8	Work Programs Component	28-01-01	Probation and Parole Investigation Reports (Introduction, Definitions, Confidentiality, Timing, and General Comments)
21.9	Education and Life Management	28-01-02	Probation and Parole Investigation Reports (Administrative Responsibilities)
21.10	Auxiliary Services	28-01-03	Probation and Parole Investigation Reports (Presentence/Postsentence Investigation Interview Procedure)
21.11	Offenses and Penalties	28-01-04	Probation and Parole Investigation Reports (Presentence/Postsentence Verification, Composition, Case Material and Submission Schedules)
22.1	Privilege Trips	28-01-05	Probation and Parole Investigation Reports (Computation of Jail Custody Credit)
23.1	Religion	28-01-06	Probation and Parole Investigation Reports (Misdemeanant Presentence Investigation Reports for the Circuit and District Courts)
25.1	Gratuities	28-01-07	Probation and Parole Investigation Reports (Supplemental Postsentence Investigation Report, Case Material, and Submission Schedule)
25.2	Public Official Notification of Release of an Inmate	28-01-08	Probation Parole Investigation Reports (Partial Investigation Reports and Submission Schedule)
25.3	Prerelease Program	28-01-09	Release of Information of Factual Content on Presentence/Postsentence Investigation Reports
25.4	Inmate Furloughs	28-02-01	Expedient Release Program
25.6	Community Center Program <u>(Amended 7/11/96)</u>	28-03-01	Parole Plans/Halfway Houses/Extended Furlough/Sponsorship/Gradual Release
25.7	Expedient Release	28-04-01	Furlough Verifications
25.8	Extended Furloughs	28-05-01	Out-of-state Investigations.
25.10	Administrative Release of Inmates <u>(Amended 7/11/96)</u>		
25.11	Victim Notification		
27-01-01	Probation and Parole Procedures		
27-02-01	Duties of Probation and Parole Officers		
27-03-01	Workload Formula Supervisor/Staff Ratio		
27-05-01	Testimony, Court Demeanor and Availability of Legal Services		
27-06-01	Availability of Supervision Services		
27-06-02	Equal Access to Services		
27-07-01	Cooperation with Law Enforcement Agencies		
27-08-01	Use of Force		
27-09-01	Kentucky Community Resources Directory		
27-11-01	Intensive Supervision		
27-12-01	Supervision: Case Classification		
27-12-02	Risk Assessment		
27-12-03	Initial Interview		
27-12-04	Conditions of Regular Supervision/Request for Modification		
27-12-05	Releasee's Report		
27-12-06	Grievance Procedures for Offenders		

DOUG SAPP, Commissioner

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 11, 1996 at 1 p.m.

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PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for August 22, 1996 at 9 a.m., in the 5th Floor Conference Room of the State Office Building. Those interested in attending this hearing shall notify in writing: Tamela Biggs, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Tamela Biggs

(1) Type and number of entities affected: 2,948 employees of the Department of Corrections, 8,729 inmates, 14,211 parolees and probationers, and visitors to all state correctional institutions.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

JUSTICE CABINET Department of Corrections Division of Adult Institutions (Amendment)

501 KAR 6:130. Western Kentucky Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590 and 439.640 authorizes the commissioner to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association.

Section 1. Incorporation by Reference. (1)(a) Western Kentucky Correctional Complex policies and procedures, July 12, 1996 [~~February 13, 1996~~], are incorporated by reference.

(b) They may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(2) Western Kentucky Correctional Complex policies and procedures include:

WKCC 01-02-01	Public Information and Media Communication
WKCC 02-00-03	Invoice and Voucher Processing
WKCC 02-00-04	Monetary Receipts During Nonbusiness Hours
WKCC 02-00-06	Purchasing Procedures (<u>Amended 7/12/96</u>)
WKCC 02-01-01	Inmate Funds
WKCC 02-01-02	Inmate Canteen (<u>Amended 7/12/96</u>)
WKCC 02-02-01	Agency Funds and Accounting Procedures (<u>Amended 7/12/96</u>)
WKCC 02-08-01	Property Receipt and Inventory Procedures
WKCC 04-01-01	Travel Reimbursement for Official Business in Attendance at Professional Meetings
WKCC 04-02-01	Employee Training and Development (<u>Amended 7/12/96</u>)
WKCC 05-01-01	Research, Consultants, and Student Interns
WKCC 06-00-01	Offender Records and Information Access
WKCC 06-00-02	Court Orders, Orders of Appearance, Warrants, Detainers, Etc.
WKCC 09-00-01	Drug Abuse and Alcohol Testing [(Amended 2/13/96)]
WKCC 10-02-01	Special Management Inmates
WKCC 11-00-02	Food Service Inmate Work Responsibilities, Evaluations, and Health Requirements (<u>Amended 7/12/96</u>)
WKCC 11-00-03	Food Service Inspections, Sanitation, Purchasing, and Storage of Food
WKCC 11-00-04	Food Service Security (<u>Amended 7/12/96</u>)
WKCC 11-00-05	Food Service General Guidelines
WKCC 11-03-01	Food Service Meals, Menus, Nutrition and Special Diets
WKCC 12-01-01	Inmate Clothing (<u>Amended 7/12/96</u>)
WKCC 13-00-01	Special Health Programs (<u>Amended 7/12/96</u>)
WKCC 13-01-01	Use of Pharmaceutical Products (<u>Amended 7/12/96</u>)
WKCC 13-02-01	Health Care Services (<u>Amended 7/12/96</u>)
WKCC 14-04-01	Legal Services Program
WKCC 14-06-01	Inmate Grievance Procedure
WKCC 15-01-01	Hair and Grooming Standards
WKCC 16-01-01	Visiting Policy and Procedures
WKCC 16-02-01	Inmate Correspondence

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WKCC 16-03-01 Inmate Access to Telephones (Amended 7/12/96)
WKCC 16-04-01 Inmate Packages ~~[(Amended 2/13/96)]~~
~~WKCC 17-01-01 Inmate Personal Property (Amended 2/13/96)~~
~~(Deleted 7/12/96)~~
WKCC 17-02-01 Inmate Reception and Orientation (Amended 7/12/96)
WKCC 20-01-01 Education Program
WKCC 22-00-01 Inmate Recreation and Leisure Time Activities
WKCC 22-00-02 Inmate Clubs and Organizations
WKCC 23-00-01 Religious Services
WKCC 25-02-01 Inmate Release Process
WKCC 25-03-01 Prerelease Programs (Amended 7/12/96)

DOUG SAPP, Commissioner

APPROVED BY AGENCY: July 10, 1996

FILED WITH LRC: July 15, 1996 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 22, 1996, at 9 a.m. in the State Office Building Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by August 17, 1996, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost therefore to be borne by the requesting party. If you do not wish to be heard at the public hearing, you may submit comments on the proposed administrative regulation. Send written notification to be heard at the public hearing, or written comments on the proposed administrative regulation to: Jack Damron or Tamela Biggs, Staff Attorneys, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, (502) 564-2204, FAX: (502) 564-6494.

REGULATORY IMPACT ANALYSIS

Contact person: Tamela Biggs

(1) Type and number of entities affected: 146 employees of the correctional institutions, 430 inmates, and all visitors to state correctional institutions.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

JUSTICE CABINET

Department of Corrections
Division of Adult Institutions
(Amendment)

501 KAR 6:170. Green River Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the commissioner to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association.

Section 1. Incorporation by Reference. (1)(a) Green River Correctional Complex Policies and Procedures, July 12, 1996 [April 11, 1996], is incorporated by reference.

(b) It may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m.

(2) Green River Correctional Complex Policies and Procedures include:

GRCC 01-05-01 Procedures Officer

GRCC 01-09-01 Duty Officer Responsibilities

GRCC 01-10-01 Smoking: GRCC Facility

GRCC 01-12-01 Public Information and Media Communication
(Added 7/12/96)

GRCC 02-01-02 Fiscal Management Accounting Procedures

GRCC 02-01-03 Fiscal Management Agency Funds

GRCC 02-02-01 Fiscal Management: Budget

GRCC 02-03-01 Fiscal Management: Audits

GRCC 02-06-01 Inmate Canteen

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GRCC 02-07-01 Inmate Personal Funds [~~Added 4/11/96~~]
 GRCC 04-01-01 Employee Training and Staff Development
 GRCC 05-01-01 Information System
 GRCC 06-01-01 Offender Records
GRCC 06-03-01 Sex Offender Register (Added 7/12/96)
 GRCC 08-03-01 Escape Plan [~~Added 4/11/96~~]
 GRCC 08-05-01 Emergency Squad: Selection, Training and Evaluation [~~Added 4/11/96~~]
 GRCC 08-06-01 Response Units [~~Added 4/11/96~~]
 GRCC 08-07-01 Natural Disaster/Earthquake [~~Added 4/11/96~~]
 GRCC 09-02-01 Drug Abuse Testing [~~Added 4/11/96~~]
 GRCC 09-03-01 Procedure for Operation in Event of Dense Fog, Inclement Weather or Loss of Power [~~Added 4/11/96~~]
 GRCC 09-04-01 Inmate Death [~~Added 4/11/96~~]
 GRCC 09-05-01 Construction Crew Entry and Exit Guidelines [~~Added 4/11/96~~]
 GRCC 09-06-01 Entry and Exit Procedures [~~Added 4/11/96~~]
 GRCC 09-07-01 Institutional Inspections [~~Added 4/11/96~~]
 GRCC 09-08-01 Storage, Issue and Use of Chemical Agents [~~Added 4/11/96~~]
 GRCC 09-09-01 Contraband Control: Collection, Preservation and Disposition of Contraband and Identification of Physical Evidence [~~Added 4/11/96~~]
 GRCC 09-10-01 Emergency Release from Locked Areas [~~Added 4/11/96~~]
 GRCC 10-01-01 Special Management Unit [~~Amended 4/11/96~~]
 GRCC 11-01-01 Food Service Guidelines [~~Amended 4/11/96~~]
 GRCC 11-02-01 Food Service: Security [~~Amended 4/11/96~~]
 GRCC 11-03-01 Dining Room Guidelines [~~Amended 4/11/96~~]
 GRCC 11-04-01 Food Service: Meals
 GRCC 11-04-02 Food Service: Menu, Nutrition and Special Diets
 GRCC 11-06-01 Health Requirements of Food Handlers
 GRCC 11-07-01 Food Service: Inspections and Sanitation [~~Amended 4/11/96~~]
 GRCC 11-08-01 Food Service: Purchasing, Storage and Farm Products [~~Amended 4/11/96~~]
 GRCC 12-01-01 Clothing, Bedding, Hygiene Supplies and Barber Services
 GRCC 13-01-01 Organization of Medical Services
 GRCC 13-02-01 Medical Services: Sick Call, Physician's Clinics and Pill Call
GRCC 13-02-03 Continuing of Care: Health Evaluations, Intra-System Transfer and Individual Treatment Plans (Added 7/12/96)
 GRCC 13-03-01 Use of Pharmaceutical Products
 GRCC 13-04-01 Health Records
 GRCC 13-04-02 Psychological and Psychiatric Reports
 GRCC 13-05-01 Management of Serious and Infectious Diseases
GRCC 13-06-01 Mental Health Services (Added 7/12/96)
 GRCC 13-07-01 Medical Restraints [~~Added 4/11/96~~]
 GRCC 13-08-01 Eye Care [~~Added 4/11/96~~]
 GRCC 13-09-01 Dental Care [~~Added 4/11/96~~]
GRCC 13-10-01 Transfers and Medical Profiles (Added 7/12/96)
GRCC 13-11-01 Informed Consent (Added 7/12/96)
GRCC 13-12-01 Infirmary Care (Added 7/12/96)
 GRCC 14-01-01 Inmate Rights and Responsibilities
 GRCC 14-02-01 Legal Services Program
 GRCC 15-01-01 GRCC Adjustment Program and Procedures
 GRCC 16-01-01 Inmate Visiting
 GRCC 16-02-01 Inmate Correspondence and Privilege Mail
 GRCC 16-03-01 Inmate Telephone Communications
 GRCC 16-04-01 Inmate Packages
 GRCC 17-01-01 GRCC Inmate Property Control
 GRCC 17-02-01 GRCC Inmate Receiving and Orientation Process
 GRCC 17-03-01 Procedure for Sending Televisions to Outside Dealer for Repair

GRCC 18-01-01 Inmate Classification
 GRCC 18-02-01 Meritorious Housing
 GRCC 18-02-02 Meritorious Visitation Program
 GRCC 19-01-01 Inmate Work Programs
 GRCC 20-01-01 Educational Programs
 GRCC 21-01-01 Library Services [~~Amended 4/11/96~~]
 GRCC 22-01-01 Recreation Programs [~~Amended 4/11/96~~]
 GRCC 22-02-01 Inmate Organizations
GRCC 22-05-01 Inmate Photo Project (Added 7/12/96)
 GRCC 23-02-01 Death or Hospitalization of an Inmate's Family Member and Notification of Inmates
 GRCC 24-01-01 Social Services and Counseling Program
 GRCC 25-01-01 Prerelease Program
GRCC 25-02-01 Parole Hearing Procedure (Added 7/12/96)

DOUG SAPP, Commissioner

APPROVED BY AGENCY: July 10, 1996

FILED WITH LRC: July 15, 1996 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 22, 1996, at 9 a.m. in the State Office Building Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by August 17, 1996, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost therefore to be borne by the requesting party. If you do not wish to be heard at the public hearing, you may submit comments on the proposed administrative regulation. Send written notification to be heard at the public hearing, or written comments on the proposed administrative regulation to: Jack Damron or Tamela Biggs, Staff Attorneys, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, (502) 564-2204, FAX: (502) 564-6494.

REGULATORY IMPACT ANALYSIS

Contact person: Tamela Biggs

(1) Type and number of entities affected: 209 employees of the correctional institutions, 614 inmates, and all visitors to state correctional institutions.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium.

(6) Economic impact, including effects of economic activities

arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Enforcement
(Amendment)

601 KAR 1:025. Transporting hazardous materials by air or highway.

RELATES TO: KRS 174.400 through 174.425, 49 CFR 107, 130, 171-180

STATUTORY AUTHORITY: KRS 174.410(2), 49 CFR Parts 130, 171-180

NECESSITY AND FUNCTION: KRS 174.410(2) provides that the Secretary of the Transportation Cabinet, in consultation with the Secretary of the Natural Resources and Environmental Protection Cabinet and the Secretary of the Cabinet for Human Resources, shall adopt by reference or in its entirety, the federal hazardous materials transportation regulation, 49 CFR (1978), as amended, to effectively carry out the intent of KRS 174.400 through 174.425 relating to the transportation of hazardous materials by air or highway. This administrative regulation implements these statutory provisions.

Section 1. The hazardous materials transportation regulations adopted and issued by the United States Department of Transportation relating to the following subjects shall govern the transportation of hazardous materials within Kentucky if the transportation of hazardous material is by air or highway:

(1) 49 CFR Part 107 [Title 49, Code of Federal Regulations, Part 407], effective October 1, 1995 as amended at 60 Fed. Reg. 49106, September 21, 1996, 61 Fed. Reg. 7178, February 26, 1996, at 61 Fed. Reg. 18926, April 29, 1996, at 61 Fed. Reg. 21084, May 9, 1996 and at 61 Fed. Reg. 27948, June 3, 1996. Part 107 sets forth the requirements for a national registration of the transporters of hazardous materials.

(2) 49 CFR Part 130 effective October 1, 1995 as amended at 61 Fed. Reg. 30533, June 17, 1996, [Title 49, Code of Federal Regulations, Part 130 effective June 16, 1993.] Part 130 sets forth general

information, regulations and definitions applicable to oil spill prevention and response plans;

(3) 49 CFR [Title 49, Code of Federal Regulations,] Part 171 effective October 1, 1995 as amended at 60 Fed. Reg. 49106, September 21, 1995; 60 Fed. Reg. 50292, September 28, 1995; at 61 Fed. Reg. 7958, February 29, 1996; at 61 Fed. Reg. 18926, April 29, 1996, at 61 Fed. Reg. 21084, May 9, 1996, at 61 Fed. Reg. 25940, May 23, 1996, at 61 Fed. Reg. 26418, May 24, 1996, at 61 Fed. Reg. 26750, May 28, 1996; at 61 Fed. Reg. 27166, May 30, 1996, at 61 Fed. Reg. 28666, June 5, 1996 and at 61 Fed. Reg. 33250, June 26, 1996. Part 171 sets forth general information, regulations and definitions applicable to all hazardous materials transportation;

(4) 49 CFR [Title 49, Code of Federal Regulations,] Part 172 effective October 1, 1995 as amended at 60 Fed. Reg. 49106, September 21, 1995, at 60 Fed. Reg. 50292, September 28, 1995, at 61 Fed. Reg. 18926, April 29, 1996, at 61 Fed. Reg. 20747, May 8, 1996, at 61 Fed. Reg. 27166, May 30, 1996, and at 61 Fed. Reg. 28666, June 5, 1996. Part 172 lists and classifies those materials which the United States Department of Transportation has designated as hazardous materials for purposes of transportation and prescribes the requirements for the following:

(a) Shipping papers;

(b) Package marking; and

(c) Labeling and transport vehicle placarding applicable to the shipment and transportation of those hazardous materials;

(5) 49 CFR [Title 49, Code of Federal Regulations,] Part 173 effective October 1, 1995 as amended at 60 Fed. Reg. 49106, September 21, 1995, at 60 Fed. Reg. 50292, September 28, 1995, at 61 Fed. Reg. 18926, April 29, 1996, at Fed. Reg. 20747, May 8, 1996, at 61 Fed. Reg. 21084, May 9, 1996, at 61 Fed. Reg. 25940, May 23, 1996, at Fed. Reg. 26418, May 24, 1996, at 61 Fed. Reg. 26750, May 28, 1996, at 61 Fed. Reg. 27166, May 30, 1996, at 61 Fed. Reg. 28666, June 5, 1996, and at 61 Fed. Reg. 33250, June 26, 1996. Part 173 sets forth the general requirements which shippers are required to meet for shipments and packaging;

(6) 49 CFR [Title 49, Code of Federal Regulations,] Part 175 effective October 1, 1995 as amended at 60 Fed. Reg. 49106, September 21, 1996; at 60 Fed. Reg. 50292, September 28, 1995 and at 61 Fed. Reg. 18926, April 29, 1996. Part 175 includes requirements in addition to those contained in Parts 171, 172, and 173 which are applicable to aircraft operators transporting hazardous materials aboard, attached to or suspended from civil aircraft;

(7) 49 CFR [Title 49, Code of Federal Regulations,] Part 177, effective October 1, 1995 as amended at 60 Fed. Reg. 50292, September 28, 1995, at 61 Fed. Reg. 18926, April 29, 1996, and at 61 Fed. Reg. 27166, May 30, 1996. Part 177 includes requirements in addition to those contained in Parts 171, 172, and 173 which are applicable to private contract or common motor carriers transporting hazardous materials on public highways;

(8) 49 CFR [Title 49, Code of Federal Regulations,] Part 178 effective October 1, 1995 as amended at 60 Fed. Reg. 49106, September 21, 1995, 60 Fed. Reg. 50292, September 28, 1995, 61 Fed. Reg. 18926, April 29, 1996, at 61 Fed. Reg. 21084, May 9, 1996, at 61 Fed. Reg. 25940, May 23, 1996, at 61 Fed. Reg. 27166, May 30, 1996, and at 61 Fed. Reg. 28666, June 5, 1996. Part 178 prescribes the manufacturing and testing specifications for packaging and containers used for the transportation of hazardous materials; and

(9) 49 CFR [Title 49, Code of Federal Regulations,] Part 180, effective October 1 [May 22], 1995 as amended at 60 Fed. Reg. 50292, September 28, 1995, at 61 Fed. Reg. 18926, April 29, 1996, and at 61 Fed. Reg. 27166, May 30, 1996. Part 180 prescribes requirements pertaining to the maintenance, reconditioning, repair, inspection and any other function having an effect on the continuing qualification and use of a packaging used to transport hazardous materials.

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Section 2. Material Incorporated by Reference. (1) The following material is incorporated by reference as a part of this administrative regulation:

- (a) 60 Fed. Reg. 49106, September 21, 1995;
- (b) 60 Fed. Reg. 50292, September 28, 1995;
- (c) 61 Fed. Reg. 7178, February 26, 1996;
- (d) 61 Fed. Reg. 7958, February 29, 1996;
- (e) 61 Fed. Reg. 18926, April 29, 1996;
- (f) 61 Fed. Reg. 20747, May 8, 1996;
- (g) 61 Fed. Reg. 21084, May 9, 1996;
- (h) 61 Fed. Reg. 25940, May 23, 1996;
- (i) 61 Fed. Reg. 26418, May 24, 1996;
- (j) 61 Fed. Reg. 26750, May 28, 1996;
- (k) 61 Fed. Reg. 27166, May 30, 1996;
- (l) 61 Fed. Reg. 28666, June 5, 1996;
- (m) 61 Fed. Reg. 30533, June 17, 1996; and
- (n) 61 Fed. Reg. 33250, June 26, 1996.

(2) The material incorporated by reference in this administrative regulation may be inspected, copied, or obtained at the Division of Motor Vehicle Enforcement, 8th Floor, State Office Building, Corner of High and Clinton Streets, Frankfort, Kentucky 40622. The office hours are 8 a.m. through 4:30 p.m. eastern time on week days. The telephone number is (502) 564-3276.

ED LOGSDON, Commissioner

FRED N. MUDGE, Secretary

APPROVED BY AGENCY: July 8, 1996

FILED WITH LRC: July 12, 1996 at 11 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on August 28, 1996 at 2 p.m. local prevailing time in the Transportation Cabinet, 4th Floor Hearing Room, Corner of High, Clinton and Holmes Streets, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by August 23, 1996, so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by August 23, 1996. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. Written comments will be accepted until the close of business on August 28, 1996. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra Pullen Davis, Staff Assistant, Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890, FAX - (502) 564-4809.

REGULATORY IMPACT ANALYSIS

Contact Person: Sandra Pullen Davis

(1) Type and number of entities affected: All transporters of hazardous materials by highway or air in Kentucky.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: A public hearing was not requested. However, there is no known cost of living or employment impact expected in Kentucky as a result of the changes to this administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: A public hearing was not requested. However, there is no known cost of doing business impact

expected in Kentucky as a result of the changes to this administrative regulation.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No change as a result of the changes to the administrative regulation.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal Highway Administration funding through the Motor Carrier Safety Assistance Program Grant.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: A public comment hearing was not held. However, no economic impacts are anticipated.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Only one alternative exists to the administrative regulation amendment as proposed. The do-nothing alternative was rejected because of the requirement in KRS Chapter 174 that the federal regulations be adopted. Therefore, the new federal regulations are proposed to be adopted because all changes are currently allowed by US DOT. A motor carrier should not be cited for complying with the new federal requirements.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There should be an added measure of safety in the transportation of hazardous materials, particularly on public highways.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Possibly, since the list of hazardous materials covered under this administrative regulation has been revised to include several additional materials, they will now have to be packaged, labeled, shipped and placarded in accordance with the safety procedures established in this administrative regulation. There should be fewer air or highway problems with the transportation of these hazardous materials if the administrative regulation is promulgated.

(c) If detrimental effect would result, explain detrimental effect: Without the safest and most up-to-date shipping and transportation procedures being implemented and enforced, it is possible that highway crashes could cause more environmental problems due to spills, leakage, or explosions.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

The proposed amendment adopts changes to the 49 CFR Parts which govern the transportation of hazardous materials by air or highway and are included in this administrative regulation. These changes were published in the "Federal Register" during the last several months. The changes of significance are as follows:

1. Adopts requirements for packaging, communication, spill response planning and response plan implementation intended to

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prevent and contain spills of oil during transportation. It requires comprehensive response plans for oil shipments in bulk packagings in a quantity greater than 42,000 gallons and less detailed basic response plans for petroleum oil shipments in bulk packagings of 3,500 gallons or more.

2. Extends only until September 30, 1997 the authority provided to transporters for shipment of certain liquid hazardous materials in open-head fiber drums that do not meet the performance-oriented packaging standards for hazardous materials.

3. Revises procedures for applying for approvals, and registering and filing reports for with the US Department of Transportation.

4. Amends the portion of the federal regulations relating to the transportation of radioactive materials to harmonize them with those of the International Atomic Energy Agency in order to provide a more uniform degree of safety for the shipment of radioactive materials.

5. Establishes a pilot administrative ticketing process for certain hazardous materials transportation violations. The US Department of Transportation will issue tickets for violations that have little or no direct impacts on safety. The administrative penalties imposed by US Department of Transportation are greatly reduced for persons who elect to pay the amounts assessed on the tickets.

6. Prohibits the offering for transportation and transportation of oxygen generators as cargo in passenger-carrying aircraft.

7. Reduces the requirements pertaining to training frequency, incident reporting, and emergency response telephone numbers.

8. Amend the requirements pertaining to the maintenance and requalification of specification and exemption cylinders used for transportation of compressed gases. The remainder of the changes are technical or clarifying in nature or are an attempt by the US Department of Transportation to restructure the hazardous materials regulations to reduce repetitive statements.

(11) TIERING: Is tiering applied? Yes. The adopted federal regulations are tiered based on the amount and type of hazardous material being transported.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 49 CFR Part 350 encourages each state to enforce uniform motor carrier safety and hazardous materials regulations for both interstate and intrastate motor carriers and drivers. A coordinated program of inspection and enforcement activities is needed to avoid duplication of effort, to promote compliance with uniform safety requirements by all types of motor carriers, and to provide a basis for sanctioning carriers for poor safety performance. The states may apply for a Motor Carrier Safety Assistance Program Grant to implement this federal policy. To be eligible for such a grant the state must adopt and assume responsibility for enforcement of the federal motor carrier safety regulations found in 49 CFR Parts 107, 130, 171 - 173, 177, 178, and 180.

2. State compliance standards. Kentucky has been a participant in the Motor Carrier Safety Assistance Program since its inception in the 1980's. The Transportation Cabinet has adopted all of the federal regulations contained in 49 CFR Parts 107, 130, 171 - 173, 177, 178, and 180.

3. Minimum or uniform standards contained in the federal mandate. These federal regulations contain the following minimum standards:

a. The listing of the materials and their minimum quantities which require a material to be treated as a hazardous material;

b. Establishes the emergency response information requirements for each transporter of a hazardous material;

c. Defines the general requirements for shipping and packaging of each type of hazardous material;

d. Defines the unacceptable hazardous material shipments on a highway;

e. Establishes requirements for the transportation of hazardous

materials that are unique to highway transportation;

f. Establishes shipping container specifications for the transportation of hazardous materials;

g. Establishes the qualification and maintenance requirements for cargo tanks which are used in the transportation of hazardous materials; and

h. Establishes an oil spill prevention and response plan for all transporters of oils.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. State law requires that the transportation of hazardous materials by air be regulated in accordance with the federal regulations. Therefore 49 CFR Part 175 relating to the carriage of hazardous materials by aircraft has also been adopted even though the federal incentive program does not include this part.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. State law requires that the transportation of hazardous materials by air be regulated in accordance with the federal regulations.

TRANSPORTATION CABINET Department of Vehicle Regulation Division of Motor Carriers (Amendment)

601 KAR 1:101. Proof of liability and cargo insurance.

RELATES TO: KRS Chapter 281, 49 CFR Parts 387, 1023, 1043
STATUTORY AUTHORITY: KRS 281.600, 49 CFR Parts 387, 1023, 1043

NECESSITY AND FUNCTION: To establish a system of insurance filings for all motor carriers operating in intrastate commerce or which have been registered in Kentucky pursuant to the provisions of 49 CFR Part 1023.

Section 1. Proof of Insurance of Interstate Exempt and Intrastate Motor Carriers. (1) Evidence of insurance required by KRS Chapter 281 shall be filed for motor carriers operating in intrastate commerce and those operating in interstate commerce but which are exempt from the authority of the Interstate Commerce Commission with the Division of Motor Carriers in the form of a certificate of insurance. The certificate of insurance shall be written to show the term of the [bore] policy to be continuous until cancelled under proper notice. Another form of evidence of insurance shall not be accepted.

(2) The certificate of bodily injury and property damage insurance shall be on form TC 95-211, "Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance" revised April, 1988. This form is incorporated by reference.

(3) All household goods motor carriers [operating pursuant to KRS 281.655(7)] shall file proof of cargo insurance on form TC 95-212, "Uniform Motor Carrier Cargo Certificate of Insurance" revised April, 1988. This form is incorporated by reference.

(4)(a) Cancellation of insurance required to be filed pursuant to KRS Chapter 281 shall be effected through the filing of form TC 95-213, "Uniform Notice of Cancellation of Motor Carrier Insurance Policies" revised April, 1988. This form is incorporated by reference.

(b) Notice of the reinstatement of insurance which was cancelled pursuant to subparagraph (a) of this subsection shall be as set forth in subsections (2) and (3) of this section.

Section 2. Insurance - Interstate Authorized Carriers. (1) Provisions of Title 49, Code of Federal Regulations, Part 387 as effective January 11, 1995 [October 1, 1992] and 49 CFR Part 1043.2 as effective November 13, 1990, shall govern the minimum amounts of liability insurance of a motor carrier of property or passengers autho-

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ized to do so by the Interstate Commerce Commission.

(2) In accordance with 49 CFR Part 1023, Interstate Commerce Commission authorized motor carriers registered in Kentucky pursuant to 601 KAR 1:040, Section 5 shall file proof of insurance with the Division of Motor Carriers on Form B.M.C. 91, "Motor Carrier Automobile Bodily Injury and Property Damage Liability Certificate of Insurance" revised by the Interstate Commerce Commission in January, 1982, or if more than one (1) insurance carrier is involved, Form B.M.C. 91X, "Motor Carrier Automobile Bodily Injury and Property Damage Liability Certificate of Insurance" revised by the Interstate Commerce Commission in January, 1982. These forms are incorporated by reference.

Section 3. Reinstatement of Insurance. A motor carrier desiring to file a reinstatement of insurance which has been cancelled shall file a new certificate of insurance as required by this administrative regulation.

Section 4. Self-insurers. (1) Persons applying in accordance with KRS 281.655(9) for an exemption in whole or in part, from the requirements of KRS 281.655(1), (5) and (6) shall file their application in petition form accompanied by a balance sheet and an income statement, as exhibits, which shall be prepared by a Certified Public Accountant or a responsible accounting officer of the applicant and shall reflect the actual financial condition of the applicant as of the last calendar quarter preceding the date of the application.

(2) When an authorized carrier operating exclusively in interstate commerce has qualified as a self-insurer with the Interstate Commerce Commission, and that commission has entered an order allowing the carrier to qualify as a self-insurer, the applicant may file, as an exhibit, a certified copy of the ICC order with its application in lieu of a balance sheet and an income statement.

(3) The cabinet may, in its discretion, enter an order consistent with its opinion of the applicant's financial condition.

(4) The order may be revoked by the cabinet at any time when it has reason to believe that the financial condition of the applicant has changed.

(5) The cabinet may also require the filing of additional financial statements or at any time it has reason to believe the financial condition of the applicant has changed.

Section 5. Material Incorporated by Reference. All of the material incorporated by reference as a part of this administrative regulation may be viewed, copied, or obtained from the Department of Vehicle Regulation, Division of Motor Carriers, Third Floor of the State Office Building, 501 High Street, Frankfort, Kentucky 40622. The [the] hours of operation are 8 a.m. through 4:30 p.m. eastern time on weekdays. The [the] telephone number is (502) 564-4540.

NORRIS BECKLEY, Commissioner
FRED N. MUDGE, Secretary

APPROVED BY AGENCY: January 11, 1996

FILED WITH LRC: July 10, 1996 at 3 p.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on August 28, 1996 at 9 a.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, 4th Floor Hearing Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by August 23, 1996 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by August 23, 1996. This request does

not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. Written comments will be accepted until the close of business on August 28, 1996. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890, Fax: (502) 564-4809.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra G. Pullen

(1) Type and number of entities affected: All motor carriers operating in Kentucky in intrastate commerce and all of the motor carriers based in Kentucky but operating under the authority of the ICC.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No effect is anticipated.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No effect is anticipated.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: The specific forms which are required for the filing of proof of insurance.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None as a result of the changes to this administrative regulation.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The Transportation Cabinet is required to report and deliver to all other jurisdictions the fees collected on their behalf from the Kentucky-based ICC-authorized carriers.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State Road Fund as authorized for use of the Department of Vehicle Regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: There was no real alternative available. Kentucky is required to follow federal mandates. The only significant changes made were as a result of changes to federal law or regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. There are differing levels

of liability and cargo insurance required for different size vehicles.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 49 CFR Part 1023, 49 CFR Part 1043, and 49 USC 11502.
2. State compliance standards. The forms required for the filing of proof of insurance by Kentucky-based, ICC-authorized carriers are the same required by federal regulation.
3. Minimum or uniform standards contained in the federal mandate. Kentucky can only require ICC-authorized motor carriers based in Kentucky to file proof of insurance.
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, pursuant to KRS Chapter 281, requires the motor carriers operating in intrastate commerce in Kentucky to file proof of insurance. The federal regulations are silent on this matter, but 49 USC 11502 allows a state to do this.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Since the federal statutes allow states to require a filing of proof of insurance for those motor carriers operating in intrastate commerce, and KRS Chapter 281 requires the filing, the filing requirement must be imposed.

**TRANSPORTATION CABINET
Department of Highways
Division of Contract Procurement
Division of Construction
(Amendment)**

603 KAR 2:015. Prequalification for construction; certificate of eligibility; and contract claims dispute.

RELATES TO: KRS 45A.245, 176.130 to 176.220, Chapter 177

STATUTORY AUTHORITY: KRS 13A.100, 61.878, 174.080, 176.140

NECESSITY AND FUNCTION: KRS 176.140 authorizes the Department of Highways to determine the eligibility of bidders for construction contracts with the department. This administrative regulation is adopted to provide a method by which the [such] determination may be made. Further the KRS 13A.100 requirement that any administrative body promulgate administrative regulations pertaining to its hearing procedure is followed in setting forth the hearing procedures for a contract claims dispute and denial, revocation, or limitation of certification.

Section 1. Definitions. (1) "Commissioner" [shall] means the Commissioner of Highways.

(2) "Cabinet" [shall] means the Transportation Cabinet.

(3) "Department" [shall] means the Department of Highways.

(4) "Division" [shall] means the Division of Construction.

(5) "Concurrence" [shall] means the agreement with the entire report and recommendation of the hearing examiner.

(6) "Dissent" [shall] means disagreement with a part or portions of the report and recommendation of the hearing examiner.

(7) "Contract" [shall] means a competitively bid contract between the contractor and the department pursuant to KRS Chapters 45A and 177.

(8) "Contractor" [shall] means the person, corporation, partnership or joint venture which enters into a contract with the department for highway maintenance or construction.

(9) "Maximum eligibility amount" means the maximum amount of uncompleted prime contract work permitted at any one (1) time.

Section 2. Certificate of Eligibility. (1)(a) All contractors bidding on construction or [and] maintenance projects or [and] accepting subcontracts on construction or [and] maintenance projects of the Transportation Cabinet, Department of Highways, shall be prequalified and possess a certificate of eligibility issued by the department to bid on construction projects.

(b) The certificate shall state the maximum eligibility amount and types of work for which the contractor is qualified.

(c) The department may [reserves the right to] waive this requirement on projects not specifically involving the construction or maintenance of public roads in connection with the letting of contracts if the [where such] requirement is not mandated by KRS 176.130. The [Such] waiver shall be contained in the notice to contractors and the bid proposal for the [such] projects.

(2) The Commissioner of Highways shall appoint a construction prequalification committee composed of department employees to review each application and make a recommendation to the State Highway Engineer [Commissioner of Highways] concerning the eligibility of contractors to bid on department construction or maintenance contracts.

Section 3. Application for Certificate of Eligibility. A contractor desiring to procure a certificate shall submit, on application and financial statement form[e] TC-14-1, "Application for Certificate of Eligibility", September 1995 edition which is incorporated by reference in Section 11 of this administrative regulation and provided by the department, information relating to the following:

(1) Ability to perform the types of work for which eligibility is requested.

(2) Construction experience resumes of the principal officers and key personnel of the contractor.

(3) Description of plant and equipment.

(4) Balance sheet and financial statement prepared as of the close of the last fiscal year or to reflect the current financial status of a newly established contractor.

(a) The financial statement of applicants desiring eligibility in excess of \$1,000,000 shall [must] be audited and attested by an independent public accountant or certified public accountant who holds a valid registration card from the Kentucky State Board of Accountancy or a registration card in the state in which the principal office of the contractor is located. The audit shall be made in accordance with the generally accepted auditing standards adopted by the membership of the American Institute of Certified Public Accountants. Standard audit forms and procedures shall conform with the institute's recommendations for the audit program of contractors. The accountant shall also comply with the specific instructions relative to the presentation of supporting detail requested by the department to determine the amount of net current assets available.

(b) The financial statement of applicants desiring eligibility of \$1,000,000 or less shall be signed by the person preparing the statement and by a principal officer of the contractor.

(5) A "Certificate of Authority" if required by KRS 176.150(4) [Other information deemed necessary by the department to indicate the applicant's capacity and ability to complete highway construction projects].

Section 4. Confidentiality of Financial Information. In order to comply with KRS 61.878(1)(b) and KRS 176.210 the department shall not make available to the public the application information required in Section 3(3) and (4) of this administrative regulation.

Section 5. Method of Computing Maximum Eligibility Amount.

(1)(a) The allowable net current assets as determined from the financial statement plus the cash surrender value, less loans, of life insurance on which the applicant is the beneficiary (exclude all policies with other beneficiaries) shall be multiplied by a factor of twelve (12) to establish the net current assets factor.

(b) The book value of owned equipment shall be multiplied by a factor of six (6) to establish the equipment factor.

(c) The equipment factor shall be added to the net current assets factor to determine the maximum capacity factor of the contractor.

(2) The contractor's percentage rating shall be established by the department by evaluating the contractor's organization and experience, plant and equipment and performance in accordance with the following maximum percentages:

(a) Organization and experience - twenty (20) percent;

(b) Plant and equipment - thirty (30) percent;

(c) Performance - fifty (50) percent.

(3)(a) The maximum eligibility amount ~~[which is the maximum amount of uncompleted prime contract work permitted at any one time]~~ shall be determined by multiplying the contractor's percentage rating and the maximum capacity factor.

(b) A contractor's current eligibility amount shall be the net difference between the contractor's maximum eligibility amount as shown on the certificate of eligibility issued by the department and the total value of uncompleted prime contract work charged to the contractor regardless of its location and with whom it may be contracted.

Section 6. Issuance of Certificate of Eligibility. (1)(a) The Construction Prequalification Committee ~~[department]~~ shall review each application for a certificate of eligibility and make a recommendation of eligibility to the State Highway Engineer.

(b) The State Highway Engineer shall issue a determination of eligibility within thirty (30) days after receipt of the application unless the ~~[such]~~ application is deferred as provided in Section 7 ~~[6]~~(3) of this administrative regulation.

(c) Upon receiving a separate written request from a contractor not prequalified with the department indicating its intent to bid on a specific federal-aid project which has been advertised for a bid opening within the thirty (30) day period, the department shall review the application and make a determination of eligibility within fifteen (15) calendar days.

(2) All certificates of eligibility shall terminate not later than 120 days after the end of the applicant's fiscal year unless suspended or revoked. Ninety (90) days of this period is to permit the applicant to file a new application in accordance with Section 3 of this administrative regulation, thirty (30) days is for the department's review of the application and, if approved, the issuance of the new certificate of eligibility.

(3) The certificate of eligibility in effect as of the bid opening date shall constitute the basis for determining the eligibility of a bidder.

(4) An applicant may, in regard to the department's decision on its application:

(a) Request reconsideration of the department's decision in accordance with Section 7 of this administrative regulation; or

(b) Appeal the department's decision in accordance with Section 10 of this administrative regulation.

Section 7. Reconsideration of Decisions of Construction Prequalification Committee. (1)(a) An applicant may at any time request reconsideration of an application when denied a certificate of eligibility or when the applicant disagrees with the maximum eligibility amount ~~[and]~~ for the types of work set forth in its certificate of eligibility by notifying the department in writing ~~[within ten (10) days after receipt of its certificate of eligibility]~~.

(b) A request for reconsideration shall clearly state the basis of the request and be supported by information and evidence which indicates why a certificate of eligibility should be issued or why the certificate of eligibility should be amended.

(c) The Construction Prequalification Committee ~~[department]~~ shall review the request, may contact the applicant for clarification or expansion of the submitted information, and shall make recommendation to the State Highway Engineer.

(d) The Department of Highways shall ~~[and]~~ notify the applicant of its determination within thirty (30) days after receipt of the request for reconsideration.

(e) If the Department of Highways does not concur with the reconsideration request of the applicant, the applicant shall be notified of his right to an administrative hearing pursuant to Section 10 of this administrative regulation.

(2) An applicant denied a certificate of eligibility may submit a new application when factors constituting the basis for the issuance of a certificate of eligibility warrant reconsideration. The department shall consider the new application and notify the applicant of the action taken within thirty (30) days after receipt of the application.

(3)(a) An application which is deferred by the department until the applicant settles outstanding debt to the Commonwealth, completes a project, or satisfies prior concerns about work performance on a project shall remain in the possession of the department until the ~~[such]~~ time that the reason for deferral is resolved to the satisfaction of the department.

(b) The department shall then take action on the deferred application to issue or deny a certificate of eligibility.

(c) The applicant submitting an application, which is deferred, shall ~~[will]~~ be notified of the deferral within ten (10) days after action is taken by the department to defer the application. The applicant shall be notified pursuant to Section 10 of this administrative regulation of his right to an administrative hearing regarding the deferral.

(4) An interim application may be submitted when there has been a substantial increase in the net current assets of the applicant if the contractor wishes to apply for an increase in the maximum eligibility shown on the certificate of eligibility. The ~~[such]~~ interim application shall contain a financial statement certified in the same manner as statements prepared as of the close of the fiscal year. The department shall review the interim application and notify the applicant of its determination within thirty (30) days after receipt of the application.

(5) A certificate holder, upon receipt of a certified mail request from the department, shall submit an interim financial statement ~~[and]~~ for current information relating to the applicant's organization, equipment and work status. The information requested shall ~~[must]~~ be submitted within thirty (30) days after receipt of the request. Failure to provide the information requested shall constitute a basis for the suspension or revocation of a certificate of eligibility.

(6) An applicant may request an administrative hearing when denied a certificate of eligibility, when his application is deferred, or when the applicant disagrees with the maximum eligibility amount or the types of work set forth in its certificate of eligibility by notifying the department in writing within ten (10) days after receipt of its denial or certificate of eligibility. The department shall hold an administrative hearing pursuant to the provisions of Section 10 of this administrative regulation.

Section 8. Revocation of Certificate of Eligibility or Reduction of Maximum Eligibility Amount. (1) Upon receipt of information or evidence that a holder of a certificate of eligibility has failed to perform satisfactorily or adhere to the laws, administrative regulations, or ~~[and]~~ specifications applicable to a contract or subcontract, the department may take action to suspend or ~~[and]~~ revoke the certificate of eligibility or to reduce the maximum eligibility amount.

(2) A notice to the certificate holder, setting forth the grounds on which the action is proposed, shall be sent by certified mail.

(3) The proposed action shall become final unless the certificate holder submits a written request for a reconsideration pursuant to Section 7 of this administrative regulation or an administrative hearing within ten (10) days after receipt of the notice.

(4) If the certificate holder requests an administrative hearing, the department shall hold this hearing in accordance with the provisions of Section 10 of this administrative regulation. ~~[Within ten (10) days after receipt of a request for hearing, the department shall set a date]~~

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~~for an informal hearing at which time the certificate holder may submit any pertinent information and evidence. The department shall advise the certificate holder of its determination within ten (10) days after the informal hearing.]~~

Section 9. Exhaustion of Engineering Structure Administrative Process. (1) When the contractor has a contract claim or requests relief from the department prior to requesting a hearing the administrative process within the engineering structure of the department shall be exhausted by the contractor through submission of the claim or request for relief to the following:

(a) First, to the resident engineer in charge of the project out of which the contract claim arose. The contractor shall submit his claim or request to the resident engineer not later than thirty (30) days after issuance of final payment to the contractor under the terms of the contract in question;

(b) Second, to the chief construction engineer in the district; and

(c) Third, to the division through its director. The decision of the division shall be in writing and shall be mailed to the contractor.

(2) The contractor may request an administrative hearing pursuant to Section 10 of this administrative regulation on his contract claim or request for relief within thirty (30) days of the date of the decision of the division.

Section 10. Hearing Procedure ~~[for Contract Claims]~~. (1) All requests for an administrative hearing pursuant to the provisions of this administrative regulation [relating to contract claims or request for relief] shall be in writing and mailed to the Commissioner, Department of Highways, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

(2) Upon receipt of a request for an administrative hearing, the commissioner shall proceed in accordance with the provisions of KRS Chapter 13B. ~~[assign the matter to a hearing examiner. The hearing examiner shall not be a full-time employee of the cabinet.]~~

~~(3) The hearing examiner shall schedule a date for the hearing as schedules of the parties who attend the hearing permit.~~

~~(4) The following people shall attend the hearing:~~

~~(a) The state highway engineer or his designee;~~

~~(b) The general counsel for the cabinet or his designee;~~

~~(c) The contractor or his spokesperson; and~~

~~(d) The departmental construction engineers.~~

~~(5) The hearing shall be recorded and the technical rules of evidence shall not apply.~~

Section 11. Hearing Examiner's Report. (1) The hearing examiner may consult with department engineers not affiliated with the division for technical assistance and consultation in the preparation of his report.

(2) Following the hearing;

(3) The hearing examiner shall prepare and submit his report with a recommendation to the commissioner through the state highway engineer and the general counsel. The state highway engineer and the general counsel may concur, not concur or dissent in the report of the hearing examiner.

(a) If the report and recommendation is concurred in by both the state highway engineer and the general counsel, the report and recommendation shall be transmitted to the commissioner for approval.

(b) If either the state highway engineer or the general counsel or both fail to concur in the report and recommendation, the report and recommendation shall be transmitted to the commissioner with any accompanying dissent or comment by the state highway engineer or the general counsel indicating reasons for disagreement.

(3) The commissioner, after receiving the report and recommendation of the hearing examiner and any accompanying dissent or comment, may accept the report and recommendation in its entirety, or reject or modify any or all of the findings and recommendations of

the hearing examiner.

(4) The contractor shall be notified in writing of the commissioner's decision in accordance with the provisions of KRS Chapter 13B.

(5) If the commissioner approves relief in whole or in part, the granting of relief shall be conditioned on the contractor's written agreement to accept the relief offered as full satisfaction and accord of all present or future administrative or legal remedies arising from the contract. Granting of the approved relief shall further be conditioned on the contractor's written agreement to dismiss with prejudice by agreed order or unilateral withdrawal any pending legal action against the department concerning the contract.

(6) If the contractor should accept the relief approved by the commissioner and execute the required agreements described above, the commissioner shall sign an official order or certificate of eligibility granting the relief.

Section 11. Material Incorporated by Reference. (1) The Transportation Cabinet form TC 14-1, "Application for Certificate of Eligibility", September 1995 edition is incorporated by reference as a part of this administrative regulation.

(2) Copies of the material incorporated by reference may be viewed, copied, or obtained from the Transportation Cabinet, Department of Highways, Division of Contract Procurement, 501 High Street, Frankfort, Kentucky 40622. The office hours are 8 a.m. to 4:30 p.m. on weekdays. The office telephone number is (502)564-3500.

J.M. YOWELL, P.E., State Highway Engineer

FRED N. MUDGE, Secretary

APPROVED BY AGENCY: July 8, 1996

FILED WITH LRC: July 12, 1996 at 3 p.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on August 28, 1996 at 2:30 p.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, 4th Floor Hearing Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by August 23, 1996 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by August 23, 1996. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. Written comments will be accepted until the close of business on August 28, 1996. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra Pullen Davis, Staff Assistant, Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890, Fax: (502) 564-4809.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra Pullen Davis

(1) Type and number of entities affected: All 640 of the contractors prequalified to bid on Transportation Cabinet construction or maintenance projects.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: A public comment hearing was not held. However, we anticipate neither costs nor savings as a result of the changes to this administrative regulation.

(b) Cost of doing business in the geographical area in which the

administrative regulation will be implemented, to the extent available from the public comments received: A public comment hearing was not held. However, we anticipate neither costs nor savings as a result of the changes to this administrative regulation.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: As required by state law, this administrative regulation sets forth the application process (including the paperwork which must be submitted) in order to be eligible to bid on highway construction or maintenance projects.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The continuing administrative cost of reviewing all of the applications for eligibility each year.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The Transportation Cabinet will have to review each application for eligibility submitted to the Cabinet.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Road fund included in the biennial budget for the Department of Highways.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: A public comment hearing was not held. However, we anticipate neither costs nor savings as a result of the changes to this administrative regulation.

(b) Kentucky: A public comment hearing was not held. However, we anticipate neither costs nor savings as a result of the changes to this administrative regulation.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Amendment of the administrative hearing process included in this administrative regulation was the impetus for the amendment of the regulation. The requirements of KRS Chapter 13B mandate those changes to this administrative regulation. The other changes were included to update the administrative regulation to the standards set forth in KRS Chapter 13A.

(8) Assessment of expected benefits: Compliance with state law.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: A public comment hearing was not held. However, we anticipate no effect of this nature from this administrative regulation.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A public comment hearing was not held. However, we anticipate no effect of this nature from this administrative regulation.

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: The purpose of promulgating this administrative regulation change was to bring it into compliance with the requirements of KRS Chapter 13B.

(11) TIERING: Is tiering applied? Yes. The application process results in a tiering of the level of construction or maintenance project for which a company would be eligible to bid.

EDUCATION, ARTS, AND HUMANITIES CABINET
Education Professional Standards Board
(Amendment)

704 KAR 20:670. Kentucky teaching certificates.

RELATES TO: KRS 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY AND FUNCTION: KRS 161.020 requires that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board. Additionally, KRS 161.028, requires teacher education institutions be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures established by the Education Professional Standards Board. This administrative regulation establishes the Kentucky certification to be issued for classroom teaching positions.

Section 1. Definitions. (1) "New teacher standards for preparation and certification" means the standards that describe what first-year teachers shall know and be able to do in authentic teaching situations.

(2) "Experienced teacher standards" means the standards set forth in 704 KAR 20:021 that identify what effective experienced teachers shall know and do.

(3) "Approved program of preparation" means one (1) which has been approved by the Education Professional Standards Board for a specific certification or which has been approved for certification by the state education agency of another state.

(4) "Statement of eligibility" means the document issued to an applicant upon completion of an approved program of preparation and successful completion of the assessments.

(5) "Assessments" mean the tests of knowledge and skills authorized by KRS 161.030.

(6) "Provisional teaching certificate" means the document issued to individuals for the duration of the beginning teacher internship program.

(7) "Beginning teacher internship" means one (1) year of supervision, assistance, and assessment required by KRS 161.030.

(8) "Professional teaching certificate" means the document issued to individuals upon successful completion of the beginning teacher internship and to applicants for whom the testing and internship are waived under KRS 161.030 based on preparation and experience completed outside Kentucky.

Section 2. Certificate Issuance. (1) A statement of eligibility for a provisional teaching certificate shall be issued to an applicant who has successfully completed a bachelor's degree, or a master's degree as set forth in Section 4(7)(e) and (8)(e) of this administrative regulation from an institution defined in KRS 161.010; an approved preparation program and assessments corresponding to the certificate identified in Section 4 [2] of this administrative regulation for which application is being made.

(2) Upon confirmation of employment in an assignment for the grade level and specialization identified on a valid statement of eligibility, a Provisional Teaching Certificate shall be issued for the duration of the beginning teacher internship established under KRS 161.030.

(3) Upon successful completion of the internship, a Professional Teaching Certificate shall be issued, valid for a four (4) year period.

[4] Each subsequent five (5) year renewal shall require completion of requirements outlined in 704 KAR 20:020 and 704 KAR 20:045.]

Section 3. Certificate Renewal. (1) The renewal shall require completion of a fifth-year program of preparation which is consistent

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with the experienced teacher standards or with standards adopted by the Education Professional Standards Board for a particular professional education specialty as defined in 704 KAR 20:021.

(2) The first five (5) year renewal shall require completion of a minimum of fifteen (15) semester hours of credit applicable to the fifth-year program as defined in 704 KAR 20:021 by September 1 of the year of expiration.

(3) The second five (5) year renewal shall require completion of the fifth-year program as defined in 704 KAR 20:021 by September 1 of the year of expiration.

(4) Each subsequent five (5) year renewal shall require completion of three (3) years of successful teaching experience or completion of at least six (6) semester hours of credit related to the profession of teaching by September 1 of the year of expiration.

Section 4. [2-] Grade Levels and Specializations. Preparation for all certificates shall ensure that teachers have the knowledge and skills for the instruction of all children including intellectually gifted and talented children and those with disabilities; are proficient in the use of technology and in the instruction for multiage and multiability grouping; and have knowledge and skills to implement the goals for the schools of the Commonwealth specified in KRS 158.6451. Teaching certificates shall be issued specifying one (1) or more of the following grade level and specialization authorizations:

(1) Interdisciplinary early childhood education, birth to primary, 704 KAR 20:084;

(2) Elementary school: primary through grade five (5) to include preparation in the academic disciplines taught in the elementary school;

(3)(a) Middle school: grades five (5) through nine (9) with two (2) middle school teaching fields to be selected from:

1. English and communications;
2. Mathematics;
3. Science; or
4. Social studies;

(b) Candidates who choose to simultaneously prepare for teaching in the middle school and for teaching exceptional children as provided in subsection (7) of this section shall be required to complete only one (1) middle school teaching field;

(4) Secondary school: grades eight (8) through twelve (12) with one (1) or more of the following specializations:

- (a) English;
- (b) Mathematics;
- (c) Social studies;
- (d) Biological science; or
- (e) Physical science;

(5) Grades five (5) through twelve (12) with one (1) or more of the following specializations:

- (a) Agriculture;
- (b) Business and marketing education;
- (c) Home economics; or
- (d) Industrial technology;

(6) All grade levels with one (1) or more of the following specialties:

- (a) Art;
- (b) A foreign language;
- (c) Health;
- (d) Physical education;
- (e) Music; or
- (f) School media librarian;

(7) Grades primary through twelve (12) for teaching exceptional children and for collaborating with teachers to design and deliver programs for preprimary children, for one (1) or more of the following disabilities:

- (a) Learning and behavior disorders;
- (b) Moderate and severe disabilities, 704 KAR 20:251;
- (c) Teacher of deaf and hard of hearing [impaired];

(d) Visually impaired; or

(e) Communication disorders, valid at all grade levels for the instruction of exceptional children and youth with communication disorders, and requires a master's degree in communication;

(8) Endorsements to certificates identified in subsections (1) through (7) of this section, valid for all grade levels, for the following:

- (a) Computer science;
- (b) English as second language;
- (c) Gifted education;
- (d) Driver education; or
- (e) Reading and writing and requires a master's degree in reading. [;

~~(9) Candidates who hold one (1) of the certificates listed above may qualify for additional certification by successfully completing the corresponding assessments.]~~

Section 5. Additional Certification. Candidates who hold a certification valid for classroom teaching may qualify for additional certification upon recommendation by an institution of higher education which shall include consideration of the performance standards and the assessments applicable to the additional certification sought.

Section 6. [3-] New Teacher Standards for Preparation and Certification. The approved program of preparation for each certification shall be designed to address the student academic expectations as provided by 703 KAR 4:060; to meet the content standards provided by 704 KAR 20:695; to prepare candidates to teach children, including children from culturally diverse backgrounds, and manage tasks identified in the following teacher performance standards:

(1) New Teacher Standard I, designs and plans instruction. The teacher designs and plans instruction and learning climates that develop student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;

(2) New Teacher Standard II, creates and maintains learning climates. The teacher creates a learning climate that supports the development of student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;

(3) New Teacher Standard III, implements and manages instruction. The teacher introduces, implements, and manages instruction that develops student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;

(4) New Teacher Standard IV, assesses and communicates learning results. The teacher assesses learning and communicates results to students and others with respect to student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;

(5) New Teacher Standard V, reflects and evaluates teaching and learning. The teacher reflects on and evaluates specific teaching and learning situations and programs;

(6) New Teacher Standard VI, collaborates with colleagues, parents, and others. The teacher collaborates with colleagues, parents, and other community agencies to design, implement, and support learning programs that develop student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge; [and]

(7) New Teacher Standard VII, engages in professional development. The teacher evaluates his overall performance with respect to modeling and teaching Kentucky's learning goals established in KRS 158.6451, refines the skills and processes necessary, and implements a professional development plan; and

(8) New Teacher Standard VIII, content knowledge. The teacher demonstrates a current and sufficient academic knowledge of certified

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content areas to develop student knowledge and performance in those areas.

Section 7. Effective Dates. [4-] (1) The provisions for the issuance of teaching certificates for each grade level and for each specialization identified in this administrative regulation shall become effective for all students admitted to the specific program of preparation beginning January 1, 1998. ~~[with the academic year following the establishment of the assessments for the particular certification by the Education Professional Standards Board.]~~

(2) Candidates admitted prior to January 1, 1998, under one (1) or more of the following administrative regulations shall complete the program by January 1, 2000: 704 KAR 20:057, 20:070, 20:075, 20:076, 20:078, 20:080, 20:095, 20:105, 20:115, 20:135, 20:145, 20:146, 20:159, 20:160, 20:161, 20:175, 20:180, 20:229, 20:230, 20:235, 20:255, 20:275, 20:280, 20:290, 20:340, 20:500, 20:520, and 20:570. ~~[the effective date of admission to the new program shall complete the program by September 1 of the fourth year of the effective date of the new program.]~~

(3) Candidates who fail to complete the program by January 1, 2000, ~~[the announced deadline date]~~ and do not apply for the certification by September 1, 2000 ~~[of the following academic year]~~ shall be required to qualify for the certification identified in this administrative regulation.

(4) The Education Professional Standards Board shall communicate to the Kentucky colleges and universities approved for these ~~[such]~~ programs the effective date for admission to each new program identified in this administrative regulation and the date by which a candidate shall complete the former program. Colleges and universities shall take adequate steps to inform candidates in these programs regarding the deadline dates.

DANIEL GREENE, Chair

APPROVED BY AGENCY: June 24, 1996

FILED WITH LRC: June 28, 1996 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on August 30, 1996, at 10 a.m. in the First Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 25, 1996, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact Person: Dr. Betty Lindsey, Office of Teacher Education and Certification, 1024 Capital Center Drive, Frankfort, Kentucky 40601, (502) 573-4606.

REGULATORY IMPACT ANALYSIS

Contact Person: Ronda Tamme

(1) Type and number of entities affected: Approximately 5,000 individuals apply for initial certification annually; 178 school districts and 25 institutions of higher education.

(2) Direct and indirect costs or savings on the: None

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including

factors increasing or decreasing costs (note any effects upon competition) for the: Institutions of higher education must file revised programs for Education Professional Standards Board approval under the new standards. Candidates for certification must file applications and accompanying documentation.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on promulgating administrative body: Office of Teacher Education and Certification (OTEC) will have the responsibility for communicating the new certification categories, requirements, and standards to institutions of higher education, individuals and local school districts. Also, OTEC will be responsible for administering, issuing and keeping records on programs, certificates issued and assignments in schools.

(a) Direct and indirect costs or savings:

1. First year: Costs associated in communicating and administering new system and changes in reviewing applications and accompanying data and record keeping.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Office of Teacher Education and Certification will receive and process applications for program approval and certification, communicate their disposition and maintain data and records on programs and certificates approved and issued.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State General Fund.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: No comments received.

(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation establishes new categories of teaching certificates and achieves a considerable reduction in the total number of categories. This is pursuant to KRS 161.028 which directs the Education Professional Standards Board to reduce and streamline the certification system.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical areas in which implemented and on Kentucky: No direct impact on public and health environment.

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Certification requirements are uniformly applicable to all individuals.

PUBLIC PROTECTION AND REGULATION CABINET Department of Mines and Minerals (Amendment)

805 KAR 5:010. Fees for licenses to mine.

RELATES TO: KRS 351.175

STATUTORY AUTHORITY: KRS 351.070(13) [Chapter 13A],

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351.175

NECESSITY, FUNCTION AND CONFORMITY: KRS 351.175 requires the Department of Mines and Minerals to establish mine license fees. This administrative regulation establishes the fees to be charged for a license to operate a mine.

Section 1. ~~[For purposes of this administrative regulation, "working section" means all areas of a coal or clay mine from the loading point or transfer point of the section to and including the working faces. This is the definition given "working section" in KRS 352.040(1)(ii).~~

~~Section 2.] Every application to the Department of Mines and Minerals for a license to operate a mine shall be accompanied by a United States Postal Money Order or Cashier's Check drawn in favor of the State Treasurer. The amount of this license fee [for an underground mine] shall be established as follows: [determined by the number of working sections in such a mine and by reference to subsections (1) and (2) of this section.]~~

~~(1) The annual license fee for new mines, which are those mines not licensed in the immediately previous year, [with one (1) working section] shall be \$300.~~

~~[(2) The annual license fee for mines with more than one (1) working section shall be \$300, plus \$100 for each additional working section.]~~

~~Section 3. The license fee for a surface mine shall be determined by the tonnage produced from such mine and by reference to subsections (1) and (2) of this section.~~

~~(1) The minimum annual license fee for a surface mine shall be \$300.]~~

~~(2) The annual license fee for mines having been licensed and produced, in the preceding calendar year, at or in excess of 100,000 tons per year shall be \$300, plus \$100 for each additional 100,000 tons or part thereof mined in the immediately previous year.~~

LAURA M. DOUGLAS, Secretary

JOHN L. FRANKLIN, Chairman and Commissioner

APPROVED BY AGENCY: July 15, 1996

FILED WITH LRC: July 15, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed amendment shall be held on Thursday, August 29, 1996, at 10 a.m., prevailing local time, in the first floor conference room of the Department of Mines and Minerals, Administration Building, 3572 Iron Works Pike, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 24, 1996, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received 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 amendment. 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 amendment. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment to the contact person.

CONTACT PERSON: Eugene D. Attkisson, General Counsel, Kentucky Department of Mines and Minerals, Post Office Box 14080, Lexington, Kentucky 40512, Telephone: (606) 246-2026, Fax: (606) 246-2038.

REGULATORY IMPACT ANALYSIS

Contact Person: Eugene D. Attkisson

(1) Type and number of entities affected: This proposed amendment would affect all surface and underground mines licensed by the Department of Mines and Minerals, of which there were 713 surface

mines and 484 underground mines in 1995.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Although no public comments were received in response to the Notice of Intent to Promulgate the amendment of this administrative regulation, there is not anticipated to be any impact upon the cost of living and employment in the geographical areas in which this proposal will be implemented, since it only represents a change in the manner in which mine license fees are established, and does not therefore impact the general costs of living or employment in the affected geographical areas.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Although no public comments were received in response to the Notice of Intent to Promulgate the amendment of this administrative regulation, new, i.e., previously unlicensed, underground mines would pay a smaller license fee than is currently required, since the number of their working sections would not affect the amount of license fee under the proposed amendment; it is possible that a few previously licensed underground mines would pay a larger license fee under the proposal, depending upon the amount of tonnage of coal mined in the immediately previous year. The adjustments in the amounts of license fees paid by underground mines, whether new or previously licensed, is anticipated to produce little, if any, change in the total amount of license fees collected. Likewise, the amount of license fees collected from surface mines, whether new or previously licensed, is not anticipated to significantly change.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation:

2. Second and subsequent years: None additional, since the operators of all coal mines licensed by this agency are currently required to annually apply for a license to mine and to pay the statutorily required mine license fee. Further, since the license fees payable by both surface and underground mines would be established on a uniform basis if the proposed amendment is implemented, no adverse effects upon competition are anticipated.

(3) Effects on the promulgating administrative body:

(a) Direct or indirect costs or savings:

1. First year:

2. Continuing costs or savings: Since this agency currently issues mine licenses and since the manner of that licensure process is not affected by the proposed amendment, little or no effect upon this agency is anticipated if the proposal is implemented.

3. Additional factors increasing or decreasing costs: There are no such additional factors.

(b) Reporting and paperwork requirements: None additional, since this agency currently issues licenses, annually, to all qualified coal mines and collects the license fee required as a part of the mine licensure process.

(4) Assessment of anticipated effect on state and local revenues: As indicated in (2)(a) and (b), although the license fees payable by some mines may be slightly affected by this proposed amendment, little or no net effect on the amount of license fees collected is anticipated. There would therefore be little effect on state revenues and none on local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No additional revenues will be required to implement and enforce the proposed amendment, since the mine licensure activities of this agency are of long duration. The mine licensure program currently in place, and as practiced if the proposed amendment is approved, is and would be paid for out of General Fund appropriations and Trust and Agency funds.

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(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky: Although no public comments were received in response to the Notice of Intent to Promulgate the amendment of this administrative regulation, as indicated in (2)(a) and (b), little or no economic impact, including effects of economic activities arising from this administrative regulation, is anticipated, since the costs or savings attributable to this administrative regulation, as proposed for amendment, are projected to remain static, influenced only by the number of surface and underground coal mines licensed, annually.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative to this proposal is to leave unchanged the method whereby license fees are established for surface and underground coal mines. Since the amounts of such fees, as set out in the unamended administrative regulation, reflect tonnage previously mined only for surface mines, this agency believes that the proposed amendment represents a more equitable manner for the imposition of license fees on both surface and underground coal mines, while concurrently preserving the general net amount of all such fees collected.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky:

(b) State whether a detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect: Although neither beneficial nor detrimental effects on public health and environmental welfare are anticipated as a result of this proposed amendment, the coal industry in this Commonwealth would be expected to benefit from the more equitable coal mine license fee structure which this proposal would create.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This agency is aware of no statute, administrative regulation, or government policy which may be in conflict with, overlap, or duplicate the proposed amendment.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no such conflict.

(10) Any additional information or comments: The proposed amendment will create a uniform basis for the establishment of license fees payable by both surface and underground coal mines, whether new or previously licensed.

(11) TIERING: Is tiering applied? Tiering was applied in the development of the proposed amendment, in an effort to ensure that the amounts of license fees payable by surface and underground coal mines, whether new or previously licensed, were established in a manner which was equitable and uniformly applicable.

PUBLIC PROTECTION AND REGULATION CABINET Kentucky Racing Commission (Amendment)

810 KAR 1:026. Racing associations.

RELATES TO: KRS 230.215(2), 230.225(1), 230.260(3)

STATUTORY AUTHORITY: KRS 230.215(2), 230.225(1), 230.260(3), (6)

NECESSITY AND FUNCTION: KRS 230.215(2), 230.225(1), and 230.260(3) requires that the commission promulgate administrative regulations prescribing conditions governing all aspects of horse racing. This administrative regulation establishes the requirements for

~~racing associations. [To regulate conditions under which racing shall be conducted in Kentucky. The function of this administrative regulation establishes the requirements for racing associations.]~~

Section 1. Maintenance of Grounds, Facilities and Uniform Track. Each association shall at all times maintain its grounds and facilities so as to be neat and clean, painted and in good repair, with special consideration for the comfort and safety of patrons, employees, and other persons whose business requires their attendance; with special consideration for the health and safety of horses there stabled, exercising, or entered to race; and shall have available adequate and proper implements to maintain a uniform track, weather conditions permitting.

Section 2. Results Boards, Totalizators Required. Each association shall provide and maintain mechanically operated totalizators and electronic boards showing odds, results, and other race information located in plain view of patrons.

Section 3. Starting Gate. Each association shall provide and maintain a working starting gate on every day horses are permitted to exercise on its racing strip. Each association shall have in attendance one (1) or more persons qualified to keep the starting gates in good working order whenever the gates are in use, and each association shall provide for periodic inspections of the gates.

Section 4. Stabling. (1) All association barns and stalls shall be:

- (a) Constructed of fire-resistant materials;
- (b) Clean, sanitary and equipped for adequate drainage;
- (c) Maintained in good repair.

(2) The racing commission shall submit to the racing secretary prior to the opening of each race meeting a list of locations of approved off-track stabling facilities from which horses may be permitted to race. The locations shall be considered for purposes of these administrative regulations "association grounds."

Section 5. Stands for Officials. Each association shall provide and maintain stands commanding an uninterrupted view of the entire racing strip for racing officials. The stands and location shall be approved by the commission. Patrol judge stands shall be constructed so the floor shall be at least six (6) feet higher than the track rail.

Section 6. Distance Pole Markings. Each association shall cause quarter poles to be painted red and white, eighth poles to be painted green and white, and 16th poles to be painted black and white.

Section 7. Lighting. Each association shall provide and maintain flood lights so as to insure adequate illumination in the stable area and parking area. Adequacy of track lighting for night racing shall be determined by the commission.

Section 8. Facilities for Stable Employees. Each association shall provide and maintain in good repair adequate living quarters and conveniently located sanitary facilities, which shall include showers, toilets, and wash basins for stable employees. No personnel shall be permitted to sleep in any stall or barn loft.

Section 9. Facilities for Jockeys. Each association shall provide and maintain adequate facilities for jockeys scheduled to ride each day. The facilities shall include accommodations for rest and recreation of jockeys on racing days, showers, toilets, wash basins, mirrors, arrangements for safekeeping of apparel and personal effects, snack bar, and other accommodations as requested by the clerk of scales.

Section 10. Facilities for Commission. Each association shall provide adequate office space for the commission on association

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grounds and shall make available to the commission, and mark accordingly, a season box of six (6) to eight (8) seats and appropriate parking places for use of the commission throughout each racing day. Each association shall honor for access to preferred parking facilities and all other areas on association grounds any ring, lapel button, or automobile emblem issued or designated as approved at any time by the commission, or by the Association of Racing Commissioners International.

Section 11. Sanitary Facilities for Patrons. Each association shall, on every racing day, provide adequate and sanitary toilets and wash rooms, and furnish free drinking water for patrons and persons having business at the association.

Section 12. Manure Removal. Each association shall provide and maintain adequate manure pits of the size and construction to handle refuse from stalls. The contents of the manure pits shall be removed from the stable area as promptly as is possible.

Section 13. Photo Finish Cameras. Each association shall provide and maintain at the finish line two (2) photo finish cameras for photographing the finish of races; one (1) camera to be held in reserve. The photo finish photographer shall promptly furnish to the stewards and placing judges prints of all finishes as may be requested and in such number as may be required for public posting. The association shall maintain a one (1) year file of all photo finishes.

Section 14. Patrol Films or Video Tapes. Each association shall at all times during a race meeting provide and maintain personnel and equipment necessary to produce adequate motion pictures or video tapes and record each race from start to finish.

(1) Projection or viewing equipment shall be adequate to permit simultaneous showing of head-on and side-angle views of the running of each race.

(2) Films and video tapes, shall be retained and secured by the association for not less than one (1) year and shall be available at all times to the commission and stewards. Each visual record of a race involving any questions, dispute, or controversy shall be filed with the commission upon order of the stewards.

(3) Films, and video tapes, shall be made available for viewing at the track by licensees who owned, trained, or rode a horse in the race requested to be viewed, and to members of the press.

Section 15. Ambulances. Each association shall provide and maintain at least one (1) man-ambulance and at least one (1) horse-ambulance during times horses are permitted to exercise or race. The ambulances shall be equipped, manned, and ready for immediate duty, and shall be located at an entrance to the racing strip.

Section 16. First Aid Room. Each association shall equip and maintain adequate first aid facilities with not less than two (2) beds and attendance of a competent physician and registered nurse during race hours unless the association can transport injured individuals to a fully-equipped hospital emergency room in five (5) minutes or less in an ambulance manned by a certified paramedic and certified emergency medical technician. The ambulance shall be on standby on association premises during race hours. In the absence of a competent physician, paramedics shall be equipped, at a minimum, with the following equipment: heart monitor and defibrillator, cellular phone, and airways intubation equipment.

Section 17. Track Kitchen. Each association shall provide adequate eating facilities within the stable area, maintained in a clean and sanitary manner at all times horses are stabled on association grounds.

Section 18. Communication System. Each association shall install

and maintain in good working service communication system between the stewards' stand and patrol judges, parimutuel department, starting gate, public address announcer, and clerk of the scales.

Section 19. Fire Prevention. Each association shall be responsible for maintaining an adequate program for fire prevention and fire suppression. Each association within fifteen (15) days before commencement of a race meeting shall be inspected by the state or local fire marshal whose certification that the association plant and stable area meet fire safety requirements is necessary for the commission to approve commencement of the race meeting. Each association shall maintain a firefighting unit of trained personnel equipped with high-expansion foam fire extinguishers and other equipment as may be recommended by the local fire inspection authority. Each association shall prohibit:

- (1) Smoking in stalls, under shed rows, and in feed rooms;
- (2) Open fires, oil or gas lamps in stable area; and
- (3) Locking of stalls occupied by horses.

Section 20. Association Police. Each association shall provide and maintain competent police and watchman services, night and day, in and about association grounds, and shall furnish daily to the commission a report on any disturbances, drunkenness, or disorderly conduct committed by any person on association grounds.

Section 21. Security. Each association shall cause to be excluded from association grounds all persons designated by order of the commission or stewards to be excluded. Each association shall take measures to maintain security of horses on association grounds so as to protect from injury due to frightening or tampering with horses. Each association shall exclude from the paddock area, race strip, and winner's entrance all persons who have no immediate connection with the horses entered except members of the commission, racing officials, and duly accredited members of the news media.

Section 22. Vendors and Suppliers. Each association shall supervise the practice and procedures of all vendors of food, horse feed, medication, and tack, who have entry to the stable area. No association by virtue of this section shall attempt to control or monopolize proper selling to owners, trainers, or stable employees, nor shall an association grant a concession to any vendor of feed, racing supplies, or racing services. Every vendor of horse feeds or medications shall file with the commission veterinarian a list of products which he proposes to sell, including any new preparation or medication. No association shall permit the sale of any alcoholic beverage, beer excepted, within the stable area.

Section 23. Ejection or Exclusion From Association Grounds. (1) An association shall for probable cause eject or exclude from association grounds all persons:

(a) Believed to be engaged in a bookmaking activity or solicitation of bets or touting and promptly submit a report to the:

1. Commission;
2. Stewards; and
3. Police.

(b) Who as a business or for compensation, either directly or indirectly, accepts any thing of value to be wagered or to be transmitted or delivered for wager to any pari-mutuel wagering enterprise, or participate in the transaction; and

(c) Attempting to use tax exempt admissions credentials not issued to him by the association.

(2) Associations shall eject or exclude from the stable areas on association grounds all persons, except those whose presence in the stable area is authorized as:

- (a) Persons licensed to conduct an activity, the conduct of which requires the presence of the licensee in the stable area;
- (b) Duly accredited members of the news media;

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(c) Guests of licensed owner or licensed trainer physically in the company of the owner or trainer;

(d) Persons physically in the company of and under the control and supervision of a racing official, association security guard, association public relations department representative.

(3) Reports of all ejections or exclusions from association grounds for any reason shall be made immediately to the commission and the stewards. The reports shall state the name of all persons and circumstances.

Section 24. Ownership of Associations. Each association shall file with the commission a revised list of persons whose identity is required by 810 KAR 1:025, Section 6(2), immediately upon transfer of any beneficial interest or control in the association as from time to time may occur.

Section 25. Plan of Association Grounds. Each association shall file with the commission existing maps and plans of association grounds, showing all structures, piping, fire hydrants, fixed equipment, racing strip, noting elevation as filled, drained, and gapped, and composition of track base and cushion. Each association shall file revised maps or plans of association grounds upon any material change as may occur from time to time.

Section 26. Attendance Report. (1) In addition to filing with the commission a copy of the report required by KRS 138.480 to be filed with the Department of Revenue on admission taxes, each association shall file with the commission daily attendance reports showing a turnstile count of all persons admitted to association grounds where pari-mutuel wagering is conducted. The attendance report shall indicate the daily number of paid admissions, taxed complimentary admissions, and tax exempt admissions.

(2) On request from the commission, each association shall file with the commission a current badge list showing the names of all persons issued tax exempt admission credentials.

(3) Tax exempt admission credentials shall not be transferable.

Section 27. Financial Report. In addition to filing with the commission copies of reports required by KRS 137.180 and 138.530 to be filed with the Department of Revenue on pari-mutuel and license taxes, each association shall furnish to the commission within sixty (60) days after the close of its fiscal year three (3) copies of its balance sheet and operating statement for the fiscal year along with a comparison to the prior year, which shall be duly sworn to by the treasurer of the association and certified by a licensed certified public accountant. The financial report shall be in a form as may be prescribed from time to time by the commission.

Section 28. Horseman's Bookkeeper. (1) Each association shall maintain a separate bank account, to be known as the "horsemen's account", with at all times sufficient funds in the account to pay all money owing to horsemen in regard to purses, stakes, rewards, claims, and deposits. Withdrawals from this account shall at all times be subject to audit by the commission, and the horsemen's bookkeeper in charge of the account shall be bonded.

(2) All portions of purse money shall be made available to earners within forty-eight (48) hours, dark days excluded after the result of the race in which the money was earned has been declared official; except, when the stewards shall order money withheld until final adjudication of a dispute determining which persons are entitled to the money in dispute.

(3) No portion of purse money other than jockey fees shall be deducted by the association for itself or for another, unless so requested in writing by the person to whom the purse monies are payable, or his duly authorized representative. Irrespective of whether requested, the horsemen's bookkeeper shall mail to each owner a duplicate of each record of a deposit, withdrawal, or transfer of funds

affecting such owner's racing account at the close of each race meeting.

Section 29. Outriders. Each thoroughbred association shall employ at least two (2) outriders to escort starters to the post and to assist in the returning of all horses to the unsaddling area. No outrider shall lead any horse that has not demonstrated unruliness, but shall assist in the control of any horse which might cause injury to a jockey or others. Each association shall provide traditional wearing apparel. Outriders shall be required to be present on the racing strip, mounted, and ready to assist in the control of any unruly horse or to recapture any loose horse, at all times horses are permitted on the racing strip for exercising or racing. All persons exercising horses during training hours, or accompanying horses to the starting gate during racing hours shall wear a protective helmet. The term "exercising" includes breezing, galloping, or ponying horses.

Section 30. Valets. Each thoroughbred association shall employ a sufficient number of persons licensed as valets to attend each individual rider on a day's racing program. The valets shall be under the immediate supervision and control of the clerk of scales. No rider shall employ a valet or be attended by any person other than the valet assigned to him by the clerk of scales. No valet shall be assigned to the same rider for more than two (2) consecutive racing days. Valets shall be responsible for the care and cleaning up of his assigned riders apparel and equipment; shall insure his rider has the proper equipment and colors for each race; shall present the proper equipment and attend the saddling of his rider's mount; and shall attend the weighing out of his rider. No valet or other jockey room attendant may place a wager for himself or another, directly or indirectly, on races run while he is serving as a valet. Each association shall provide uniform attire for valets who shall wear same at all times while performing their duties within public view.

Section 31. Minimum Purse and Stakes Values. No thoroughbred association shall program or run any race the purse for which is less than \$2,000 in cash without special permission of the commission. No thoroughbred association shall program or run any stakes race the added value of which is less than \$10,000 in cash added by the association to stakes fees paid by owners. The minimum cash amounts paid by the association shall be exclusive of nomination, eligibility, entrance, and starting fees, and exclusive of other cash awards, premiums, prizes, or objects of value.

Section 32. Maximum Number of Races. No association shall program or run more than nine (9) races on any single racing day without special permission of the commission.

Section 33. Two (2) Year Old Races. Beginning on March 1 of each year, each thoroughbred association shall program in the conditions book at least four (4) two (2) year old races each week.

Section 34. (1) Exculpatory clauses. Effective January 1, 1997, agreements including but not limited to stall applications, entry forms and condition books between persons or entities licensed by the Kentucky Racing Commission regarding the stabling of horses, the racing of horses, the training of horses or other activities at tracks owned or operated by licensed associations, and conditions of racing established by licensed associations, shall not contain provisions which absolve or hold harmless a licensee from liability, or limit the liability of a licensee, for loss, loss of use, injury or damage caused or contributed to by the acts or omissions of any licensee or its agents or employees, except for:

(a) Ordinary negligence which causes or contributes to loss, injury or damage to horses while on the premises of a licensed association; and

(b) Ordinary negligence which causes or contributes to personal

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injury or property damage, including but not limited to loss, loss of use, injury or damage to horses arising from the use of grass fields or gallops owned or controlled by the licensed association. Subject to the above exceptions, all licensees participating in the stabling of horses, the racing of horses, the training of horses, and related activities at tracks owned or operated by licensed associations shall be responsible for their own acts and omissions and those of their agents and employees to the same extent as provided by law. No licensee shall attempt to limit liability of any person or entity for gross negligence or intentional wrongdoing.

(2) Constructive notice to and consent of licensees. All persons licensed by the Kentucky Racing Commission shall be deemed, as a condition of licensure, to have notice of and to have consented to exculpatory provisions, which comply with the limitations set forth in this administrative regulation, included in agreements between licensees and in conditions of racing established by a licensed association. Exculpatory provisions which exceed the limitations set forth in this administrative regulation shall be void and unenforceable in their entirety.

(3) Model provision. The following provision shall be deemed to comply with the limitations set forth in this administrative regulation: All Kentucky Racing Commission licensees, including but not limited to the host association, owners, trainers, jockeys, and grooms ("licensees"), participating in stabling, racing, training, and related activities at (name of licensed association) recognize that hazards and risks inherent in such activities may cause the injury or death of horses. Therefore, in consideration of participating in stabling, racing, training, and related activities at (name of licensed association), all licensees assume the risks of, and release, hold harmless and covenant not to sue all other licensees so participating for:

(a) Ordinary negligence which causes or contributes to loss, loss of use, injury or damage to horses while on the premises of (name of licensed association); and

(b) Ordinary negligence which causes or contributes to personal injury or property damage, including but not limited to loss, loss of use, injury or damage to horses arising from the use of grass fields or gallops owned or controlled by (name of licensed association), whether arising from alleged acts or omissions of a licensee and its agents or employees, the condition of the premises of (name of licensed association) or any other cause. Except as provided above, all licensees participating in racing, training and related activities at (name of licensed association) shall be responsible for their own acts and omissions and those of their agents and employees to the same extent as provided by law.

RICHARD "SMITTY" TAYLOR, Chairman

APPROVED BY AGENCY: July 9, 1996

FILED WITH LRC: July 9, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing will be held on August 27, 1996 at 10 a.m. at the offices of the Kentucky Racing Commission at the Kentucky Horse Park, 4063 Iron Works Pike, Building B, Lexington, Kentucky. Those interested in attending the hearing should contact in writing: Michael A. Fulkerson, Chief Administrative Officer, Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Contact Person: Mike Fulkerson

(1) Type and number of entities affected: There are approximately 6000 licensed thoroughbred owners and 6 thoroughbred racing associations. This amendment has the potential to affect all of them.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There are none.

(b) Cost of doing business in the geographical area in which the

administrative regulation will be implemented, to the extent available from the public comments received. At most, this proposal will not increase costs of doing business, but more fairly distribute them between tracks and horsemen.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There are no changes from the existing procedure.

2. Second and subsequent years: There are no changes.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no changes that affect the Racing Commission.

2. Continuing costs or savings: There are none.

3. Additional factors increasing or decreasing costs: There are none.

(b) Reporting and paperwork requirements: The paperwork requirements remain the same.

(4) Assessment of anticipated effect on state and local revenues: This change will not affect state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Existing budget already covers costs of administration.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: The regulation affects the entire state the same and more equitably distributes insurance costs.

(b) Kentucky: The comments were the same without regards to geographic area.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The commission, the tracks, and the horsemen discussed alternatives for over one year. This proposed amendment represents a consensus of all parties.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There are none.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would be none.

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are none.

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments:

(11) Tiering: Is tiering applied? Tiering was not applied. It was not applied to the regulation to make all tracks subject to the same requirements.

CABINET FOR HEALTH SERVICES Department for Public Health Division of Epidemiology (Amendment)

902 KAR 2:060. Immunization schedules.

RELATES TO: KRS 158.035, 211.180, 214.032, 214.034, 214.036

STATUTORY AUTHORITY: KRS 194.050, 211.090, EO 96-862, 1996 Ky. Acts ch. 306

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NECESSITY AND FUNCTION: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources, changes the name of the Department for Health Services to Department for Public Health, and places the Department for Public Health and all its programs under the Cabinet for Health Services. KRS 211.180 mandates the Cabinet for Health Services [Human Resources] to implement a statewide program for the detection, prevention and control of communicable diseases. KRS 214.034 requires the establishment of immunization schedules by the Cabinet for Health Services. This [Human Resources-The] administrative regulation specifies the recommended schedule for mandatory immunization and is in keeping with the latest scientific information on the topic.

Section 1. [3-] Definitions. [~~As used in this administrative regulation:~~]

(1) "Dose" means a measured quantity, as recommended by the Advisory Council on Immunization Practices of the U.S. Public Health Services or the American Academy of Pediatrics, of an immunizing agent, administered at a frequency not less than the shortest interval between doses recommended by the Advisory Council of the U.S. Public Health Service or the American Academy of Pediatrics. Partial, split, half or fractionated quantities are not acceptable for certification.

(2) "DPT" means diphtheria and tetanus toxoids combined with pertussis vaccine;

(3) "DTaP" means diphtheria and tetanus toxoids combined with acellular pertussis vaccine;

(4) "HepB" means hepatitis B vaccine;

(5) "Hib" means Haemophilus influenzae type b conjugate vaccine;

(6) "IPV" means inactivated polio virus vaccine;

(7) "MMR" means measles, mumps, and rubella vaccines combined;

(8) [(2)] "OPV" means trivalent oral poliovirus vaccine (Sabin);

(9) [(3)] "Td" means combined tetanus and diphtheria toxoids (adult type).

Section 2. [4-] Schedule for [Required] Immunizations. The [~~recommended~~] schedule established by the Cabinet for Health Services for active immunization of normal infants and children against diphtheria, tetanus, pertussis, poliomyelitis, [~~rubeola~~] [measles, mumps, [~~and~~] rubella, hepatitis B, and haemophilus influenza type b shall be as follows:

(1) Zero to two (2) months of age: dose one (1), HepB;

(2) One (1) to four (4) months of age: dose two (2), HepB;

(3) Two (2) months of age: dose one (1), DTP or DTaP, Hib, OPV or IPV;

(4) [(2)] Four (4) months of age: dose two (2), DTP or DTaP, Hib, OPV or IPV;

(5) [(3)] Six (6) months of age: dose three (3), DTP or DTaP;

(6) Six (6) to eighteen (18) months of age: dose three (3), HepB, OPV or IPV;

(7) Twelve (12) to [(4)] fifteen (15) months of age: dose one (1) MMR; dose three (3), Hib [measles, rubella, DTP, OPV];

(8) Twelve (12) to eighteen (18) months of age: dose four (4), DTP or DTaP;

(9) Between four (4) years of age and entry to school, preschool programs, day care centers, certified family child care homes, or other licensed facilities which care for children: dose five (5), DTP or DTaP; Dose four (4), OPV or IPV; Dose two (2), MMR;

[(5) Before school entry: DTP, OPV;]

(10) [(6)] Before sixth grade entry: dose two (2), MMR, unless two (2) doses of MMR were previously received [measles, rubella];

(11) Eleven (11) [(7) Fourteen (14)] to sixteen (16) years of age: Td.

Section 3. [2-] Immunizations Required for [School] Entry Into Day Care Centers, Certified Family Child Care Homes, Other Licensed

Facilities which Care for Children, Preschool Programs, School and Sixth Grade, and when Ten (10) Years have Elapsed from the Last Dose of DTP, DTaP, or Td. The following schedule [~~list below~~] gives the number of doses required, according to age at entry: [~~for school entry:~~]

(1) Less than three (3) months of age: none;

(2) At least three (3) months of age and less than five (5) months of age:

(a) One (1) dose of DTP or DTaP;

(b) One (1) dose of OPV or IPV;

(c) One (1) dose of Hib;

(3) At least five (5) months of age and less than seven (7) months of age:

(a) Two (2) doses of DTP or DTaP or combinations thereof;

(b) Two (2) doses of OPV or IPV or combinations thereof;

(c) Two (2) doses of Hib;

(4) At least seven (7) months of age and less than twelve (12) months of age:

(a) Three (3) doses of DTP or DTaP or combinations thereof;

(b) Two (2) doses of OPV or IPV or combinations thereof;

(c) Three (3) doses of Hib;

(5) At least twelve (12) months of age and less than sixteen (16) months of age:

(a) Three (3) doses of DTP or DTaP or combinations thereof;

(b) Two (2) doses of OPV or IPV or combinations thereof;

(c) Three (3) doses of Hib or two (2) doses at twelve (12) months of age or older of Hib or one (1) dose at fifteen (15) months or older of Hib;

(6) At least sixteen (16) months of age and less than nineteen (19) months of age:

(a) Four (4) doses of DTP or DTaP or combinations thereof;

(b) Two (2) doses of OPV or IPV or combinations thereof;

(c) Four (4) doses of Hib, including one (1) dose at age twelve (12) months or older, or two (2) doses at age twelve (12) months or older of Hib or one (1) dose at age fifteen (15) months of Hib;

(d) One (1) dose of MMR at age twelve (12) months or older;

(7) At least nineteen (19) months of age and less than forty-nine (49) months of age:

(a) Four doses of DTP or DTaP or combinations thereof;

(b) Three doses of OPV or IPV or combinations thereof;

(c) Four (4) doses of Hib, including one (1) dose at age twelve (12) months or older, or two (2) doses at age twelve (12) months or older of Hib or one (1) dose at age fifteen (15) months of Hib;

(d) One (1) dose of MMR at age twelve (12) months or older;

(8) At least forty-nine (49) months of age and less than five (5) years of age:

(a) Four (4) doses of DTP or DTaP or combinations thereof, including one (1) at four (4) years of age;

(b) Three (3) doses of OPV or IPV or combinations thereof, including one (1) at four (4) years of age;

(c) Four (4) doses of Hib, including one (1) dose at age twelve (12) months or older, or two (2) doses at age twelve (12) months or older of Hib or one (1) dose at age fifteen (15) months of Hib;

(d) One (1) dose of MMR at twelve (12) months of age or older, and a second dose of measles vaccine, preferably administered as MMR;

(e) Effective August 1, 1998, for children born October 1, 1992, or later, three (3) doses of HepB.

(9) At least five (5) years of age and less than seven (7) years of age:

(a) Four (4) doses of DTP or DTaP or combinations thereof including one (1) at four (4) years of age or older;

(b) Three (3) doses of OPV or IPV or combinations thereof, including one (1) at four (4) years of age or older;

(c) One (1) dose of MMR at twelve (12) months of age or older, and a second dose of measles vaccine, preferably administered as MMR.

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(d) Effective August 1, 1998, for children born October 1, 1992, or later, three (3) doses of HepB.

(10) At least seven (7) years of age:

(a) Four (4) doses of DTP or DTaP or combinations thereof, including one (1) at age four (4) years of age or older, or a dose of Td at seven (7) years of age or older, preceded by two (2) doses of DTP or DTaP or Td or combinations thereof;

(b) Three (3) doses of OPV or IPV or combinations thereof, including one (1) at four (4) years of age or older;

(c) One (1) dose of MMR at twelve (12) months of age or older, and a second dose of measles vaccine, preferably administered as MMR.

(d) Effective August 1, 1998, for children born October 1, 1992 or later, three (3) doses of HepB.

(11) At sixth grade entry: one (1) dose of MMR at twelve (12) months of age or older and a second dose of measles vaccine, preferably administered as MMR.

(12) When ten (10) years have elapsed from the last dose of DTP, DTaP, or Td: One dose of Td.

[DTP: a minimum of four (4) doses; if the fourth dose is received before the fourth birthday, a fifth is required on or after the fourth birthday but before school entry.

OPV: a minimum of three (3) doses; if the third is received before the fourth birthday, a fourth is required on or after the fourth birthday but before school entry.

Measles and Rubella: one (1) dose given on or after the first birthday is required for school entry. Students entering the sixth grade require a total of two (2) doses, one (1) of which was received during or after 1990. (NOTE: Measles and rubella vaccines are normally administered in combination with mumps virus vaccine as MMR.)

Td: students for whom ten (10) or more years have elapsed since the preschool DTP booster, one (1) dose of Td vaccine.]

Section 4. In Sections 2 and 3 of this administrative regulation, if the first two (2) doses of Hib vaccine were Meningococcal Protein Conjugate, the third dose may be omitted, and the child counted for regulatory purposes as having received three (3) doses.

Section 5. The immunization certificate which shall be on file for each child enrolled in public or private primary or secondary schools and preschool programs or cared for in a day care center, certified family child care home, or other licensed facility which cares for children, shall be approved or provided by the Cabinet for Health Services. The certificates will be available at the offices or clinics of private providers and at all local health departments. The certificate may be either hard copy or electronically produced with information in a format approved by the Immunization Program, Cabinet for Health Services.

Section 6. Variance from Immunization Schedule. (1) The individual physician or local health department shall have the authority to alter the immunization schedule when indicated for any unusual clinical circumstance in a given patient. The local health department, in consultation with the Immunization Program, Cabinet [Department] for Health Services, shall have the authority to alter the immunization schedule when indicated because of any unusual epidemiological circumstance in the community.

(2) A [school-age] child who has begun but not completed the immunization schedule required by KRS 214.034 [458.035] may be permitted to attend schools, preschool programs, day care centers, certified family child care homes, or other licensed facilities which care for children [elapses] for a limited period of time specified by the individual physician or local health department as necessary for the completion of the immunization schedule.

RICE C. LEACH, M.D., Commissioner
JOHN MORSE, Secretary

APPROVED BY AGENCY: July 12, 1996

FILED WITH LRC: July 12, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held August 21, 1996, at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by August 16, 1996. If no notification of intent to attend the hearing is received by that date the hearing may be canceled. The hearing is open to the public. Any person who attends 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, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Jr., Acting General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Reginald Finger, M.D./Joyce Bothe

(1) Type and number of entities affected: This administrative regulation updates the schedule of immunizations against vaccine preventable diseases for all children in Kentucky and adds immunization certificate requirements for additional facilities where children are congregated.

(2) Direct and indirect costs or savings to those affected:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments were received by the administrative body.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments were received by the administrative body.

(c) Compliance reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: The immunization certificate required by this regulation is currently available at all local health departments and is provided to other public and private providers who immunize children.

2. Second and subsequent years: See (c)1.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First Year: Most of the increased cost will be funded by the federal immunization initiative. There will be some increased cost to the administrative body for vaccine and the electronic tracking system; however this cost has been planned and funded by the governor and the General Assembly. The savings will be seen in the decreased cost of health care for treatment of vaccine preventable diseases and their sequelae.

2. Continuing cost or savings: See (a)1.

3. Additional factors increasing or decreasing costs: See (a)1.

(b) Reporting and paperwork requirements: Minimal increase to the cabinet.

(4) Assessment of anticipated effect on state and local revenues: The change in the immunization schedule will not have an effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal immunization funds and approved General Fund dollars.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising

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from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments were received by the administrative body.

(b) Kentucky: See (6)a.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 214.034 requires the cabinet to establish immunization schedules by administrative regulation.

(8) Assessment of expected benefits:

(a) Identify affects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The prevention of vaccine preventable diseases by administration of age-appropriate immunization is the single most effective public health measure. Through this practice, children in all areas and in the state are protected from diseases which can be devastating to the child and to society.

(b) State whether a detrimental effect on environment and public health would result if not implemented: See (8)a.

(c) If detrimental effect would result, explain detrimental effect: See (8)a.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: There is no known conflict with relation to this administrative regulation.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: Although no written request for a public hearing or written comments were received by the CHS, Office of Counsel, the content of the proposed administrative regulation was sent by the Department for Public Health to a broad sample of those agencies, organizations, groups and individuals who will be affected by or had special interest in this administrative regulation.

(11) TIERING: Is tiering applied? No. Tiering was not applied because all entities are regulated in the same manner.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This administrative regulation will affect only a part of local government. The local health department administers the immunization program within the county.

3. State the aspect or service of local government to which this administrative regulation relates. The local health department administers the immunization program within the county.

4. How does this administrative regulation affect the local government or any service it provides? The local health department administers the immunization program within the county.

CABINET FOR HEALTH SERVICES Department for Public Health Division of Health Systems Development (Amendment)

902 KAR 14:010. Emergency medical services (EMS) personnel funding assistance.

RELATES TO: KRS 211.950 to 211.956 ~~[211.958]~~

STATUTORY AUTHORITY: KRS 211.952, 211.956, EO 96-862,

1996 Ky. Acts ch. 152

NECESSITY AND FUNCTION: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and

places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 211.952(2)(d) and (f) requires ~~[authorizes]~~ the Cabinet for Health Services to promulgate administrative regulations ~~[Human Resources]~~ to provide funding and technical assistance and to maintain a program for the planning, development, and improvement of emergency medical services and trauma care systems throughout the state utilizing, among other factors, the system components described in KRS 211.950(4) ~~[Public Law 93-154, the Emergency Medical Services Act of 1973]~~. The function of this administrative regulation is to establish standards and criteria governing the allocation of funding assistance to city and county governments for emergency medical services (EMS) matching funds ~~[for payment of salaries of trained emergency medical services personnel to maintain essential services]~~ in accordance with the conditions specified in KRS 211.956 ~~[and to provide for ambulance and equipment funding for volunteer services pursuant to KRS 211.958]~~.

Section 1. Definitions. (1) "Ambulance service" means a Class I ambulance provider ~~[service licensed by the cabinet to provide emergency health care ground transportation services]~~ which meets the requirements of 902 KAR 14:080 ~~[20:117]~~, Sections 2 through 7, and 8, 9, 10, and 11, if applicable, and which is operated by or under contract to the applicant.

(2) "Applicant" means a city, county or urban county government.

(3) "Cabinet" means the Cabinet for Health Services. ~~[Human Resources]~~

(4) "EMS matching fund" means funds appropriated by the General Assembly to carry out the provisions of KRS 211.954 and 211.956.

(5) "EMS training aids" means audiovisual media such as films, video tapes, interactive video disks, texts and reference books, and related products which are specifically developed to train EMS personnel in subjects for which continuing education is offered and which are developed and distributed commercially or by state or federal programs.

(6) "EMS training equipment" means nonexpendable and nonconsumable items which have a per unit cost of \$100 or more, which have a useful life of one (1) year or more, and which are exclusively utilized to train EMS personnel. Medical and related equipment normally required for ambulance services is not considered EMS training equipment unless it is specifically designed for training purposes and cannot be utilized on an ambulance. ~~["Emergency volunteer run" means an emergency response by an ambulance service to provide medical care as a result of an injury or medical emergency where the ambulance is staffed solely by volunteers.]~~

(6) "General fund" means revenue derived by a city or county government, but excluding both fees for ambulance services and monies from the EMS matching fund which may be deposited into the city or county general fund.

(7) "Personnel costs" means salaries paid for ambulance service personnel including fringe benefits such as employer contributions for Social Security, medical insurance and retirement.

(8) "Volunteer" means a certified emergency medical technician (EMT), paramedic, registered nurse, or physician who does not receive a salary from the ambulance service or the applicant for making ambulance runs or performing as an EMT.]

Section 2. Application for Personnel Funding Assistance. (1) Kentucky city or county government may apply to the cabinet for personnel funding assistance from the EMS matching fund. ~~[In accordance with KRS 211.956, an applicant for funding assistance to maintain an adequate number of trained personnel to staff an ambulance service operated:~~

~~(a) By the applicant; or~~

~~(b) Under contract to the applicant.~~

~~(2) The application shall include:~~

~~(a) The total ambulance service operating budget;~~

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~~(b) Projected receipts from the currently approved general fund budget of the applicant;~~

~~(c) Itemization of sources and amounts of city or county revenues appropriated for the provision of ambulance services; and~~

~~(d) Documentation of salaries and training levels of ambulance service personnel.~~

~~(3)(a) An applicant for EMS matching funds shall use an [the] application form provided by the cabinet [for Human Resources].~~

(b) The applicant form "Application for Ambulance Service Funding Pursuant to KRS 211.950 to 211.956 (rev. 7/96)" [211.956" (rev. 7/92)], is incorporated by reference. It [and] may be inspected, copied, or obtained from the Commissioner [Emergency Medical Services Branch], Department for Public Health [Health Services], Cabinet for Health Services [Human Resources], 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. through 4:30 p.m., Monday through Friday.

Section 3. Funding [Criteria and] Allocation. The total funds for this matching program awarded to local governments within any county shall not exceed the amount available to that county as described in KRS 211.956(3). If the eligible applications submitted by a county and cities within that county exceed the funds available to that county, the cabinet shall further prorate the funds available to that county on the basis of population of the individual city and county applicants within that county. For purposes of prorating funds among counties and cities within counties, the cabinet shall use the latest official population estimates published by the Kentucky State Data Center, Population Research, at the University of Louisville.

Section 4. Funding Requirements. (1) An applicant for EMS personnel matching funds shall submit a plan in accordance with the format developed by the cabinet as part of the application indicating how EMS matching funds requested shall contribute to the legislative intent of assuring that an adequate number of trained emergency medical services personnel are available.

(2) An applicant shall provide assurance that EMS personnel actively and regularly respond to medical emergencies and provide emergency medical treatment as a significant part of their duties, if the applicant is requesting EMS matching funds to:

(a) Purchase EMS training equipment and training aids;

(b) Provide continuing education; or

(c) Implement salary and fringe benefit enhancements.

(3) An applicant requesting matching funds for salary and fringe benefit enhancements shall provide assurance that the employees who are to receive salary and fringe benefit enhancements serve as attendants with eligible ambulance services and are public employees or employees of an ambulance tax district established pursuant to KRS Chapter 108.

(4) An applicant requesting matching funds to train the general public in cardiopulmonary resuscitation or first aid shall indicate the type of training to be provided, type and source of certification for training to be provided.

(5) EMS matching funds shall be used for new or expanded activities and shall not be used to supplant other funds being used for essentially the same activities or purposes.

Section 5. Final Report of Activities and Expenditures. (1) Within ninety (90) days following the completion of the approved project or not later than fifteen (15) months following the date of the award, a city or county government receiving EMS personnel matching funds shall complete a final report of:

(a) Activities carried out using state funds; and

(b) Expenditures.

(2) The final report shall be signed by the county judge executive or the mayor of the local government, as appropriate, attesting to the accuracy and correctness of the report.

(3) A city or county government which fails to submit a properly

completed and signed final report shall not be eligible to receive EMS matching equipment or personnel funds until all reporting requirements have been met.

Section 6. Title, Use and Disposition of Equipment. (1) The applicant shall retain legal title to equipment purchased pursuant to this administrative regulation.

(2) The applicant shall:

(a) Maintain property records for each item of equipment purchased with EMS matching funds; and

(b) Notify the cabinet of any changes in its intended use or current status.

(3) The applicant shall obtain prior approval from the cabinet to dispose of an item of equipment purchased with EMS matching fund assistance having a residual value of at least \$300.

(4) The cabinet may require that proceeds from the sale of equipment purchased with EMS matching fund assistance which has a residual value of at least \$300 be prorated and returned to the cabinet in the same ratio as the original funding assistance. [If total eligibility for EMS matching funds exceeds the amount of EMS matching funds available, EMS matching funds shall be prorated by dividing total EMS matching funds by total eligible funds to obtain a percentage. That percentage, applied to the amount for which each applicant is eligible, shall determine the actual amount which shall be awarded to each applicant.]

RICE C. LEACH, Commissioner

JOHN MORSE, Secretary

APPROVED BY AGENCY: July 8, 1996

FILED WITH LRC: July 12, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1996 at 9 a.m. at the Health Services Auditorium, 1st Floor, CHS Building. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1996 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing will be canceled. This hearing is open to the public. Any person who attends will be given the 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, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing or written comments on the proposed administrative regulation to: William K. Moore, Jr., Acting General Counsel, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, Telephone: (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Contact person: Robert Calhoun

(1) Type and number of entities affected: Approximately 150 city and county government ambulance providers.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. This administrative regulation provides conditions for awarding matching funds to city and county governments for personnel assistance to maintain emergency medical services. EMS matching funds may be used to pay personnel costs for emergency medical personnel such as salaries, fringe benefits, continuing education, training aids and training equipment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon

competition) for the:

1. First year following implementation:
2. Second and subsequent years: None
- (3) Effects on the promulgating administrative body:
 1. Direct and indirect costs or savings:
 1. First year: There will be no additional costs or savings within the cabinet.
 2. Continuing costs or savings: As above.
 2. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements required in this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: City and county governments will no longer be required to match EMS funds with more than 5% of their city or county general fund budget, however, the total amount that city and county governments within a county may receive was decreased in statute from \$40,000 to \$10,000. Available funds will be prorated on the basis of population. Some counties which were not previously eligible may now be eligible for matching funds. Some counties may now be eligible for more funds and some counties will now be eligible for less funds than they received in previous years.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation have an economic impact on providers who receive matching funds.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation complies with the specific legislative requirements of House Bill 693, as passed in the 1996 General Assembly, which requires the Cabinet to promulgate administrative regulations to set out requirements and priorities for matching funds. No alternatives were considered.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: When fully implemented, this administrative regulation will have a beneficial effect on the public's health by assisting city and county governments assure an adequate number of trained emergency medical personnel.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Yes

(c) If detrimental result would result, explain detrimental effect: Without the funds provided through the EMS matching funds some city or county governments would not be able to maintain their level of emergency medical services.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity or proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: The purpose of this emergency regulation is to comply with HB 693 passed by the 1996 General Assembly.

(11) TIERING: Is tiering applied? Yes. Tiering is applied because this administrative regulation provides EMS matching funds based on county population.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes. This administrative regulation relates to city and county government operated ambulance services.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This administrative regulation will affect city and county governments which apply for EMS matching fund personnel assistance to maintain city and county operated emergency medical services.

3. State the aspect or service of local government to which this administrative regulation relates. It relates to emergency medical personnel who work as paid or volunteer employees for city and county operated ambulance services.

4. How does this administrative regulation affect the local government or any service it provides? This administrative regulation will provide personnel funding assistance to city and county governments in order to maintain an adequate number of trained emergency medical personnel to respond to emergencies.

CABINET FOR HEALTH SERVICES

Department for Public Health

Division of Health Systems Development

(Amendment)

902 KAR 14:070. License procedures and fee schedule for ambulance providers [~~and tiered response emergency medical services~~].

RELATES TO: KRS 211.950 to 211.956, [~~244.958~~], 216B.010 to 216B.130, 216B.990

STATUTORY AUTHORITY: KRS Chapter 13B, 211.952, 216B.042, 216B.105, 216B.410, EO 96-862, 1996 Ky. Acts ch. 233

NECESSITY AND FUNCTION: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 216B.042 and 216B.105 requires [mandate] that the Cabinet for Health Services [Human Resources] regulate health facilities and health services. KRS 211.952 requires the cabinet to establish [transfer the responsibility for licensing ambulance providers defined in KRS 211.950 to] a single lead agency within the Department for Public Health, with the responsibility for promulgating administrative regulations for licensing, inspecting, and regulating ambulance providers. [Health Services, Cabinet for Human Resources]. This administrative regulation provides specific requirements for obtaining and maintaining a license to operate an ambulance service [or a tiered response emergency medical service] and establishes the fee schedule for a license.

Section 1. Definitions. (1) "Advanced life support (ALS)" means [~~an ambulance provider which:~~

(a) Utilizes] certified and licensed emergency medical professionals who [to] provide prehospital medical care such as:

(a) [~~1-~~] Basic life support services;

(b) [~~2-~~] Advanced airway management such as endotracheal intubation;

(c) [~~3-~~] Defibrillation; and

(d) [~~4-~~] Administration of intravenous fluids and pharmaceuticals under the authority of a physician medical director[; and

(b) ~~Meets the requirements established in 902 KAR 14:080, Sections 1 through 10 and is licensed by the cabinet to provide health care and transportation on an emergency and nonemergency basis to persons who:~~

~~1. Are sick, injured, or otherwise incapacitated; and~~

~~2. May require immediate stabilization and continued medical response and intervention during transit or upon arrival at the patient's destination to safeguard the patient's life or physical well being].~~

(2) "Ambulance service" means an ambulance provider as defined in KRS 211.950(2) and 211.952(2)(c)1, 2, 3, and 4. [~~"Air ambulance provider" means a basic life support or ALS air ambulance service~~

which meets the requirements of 902 KAR 14:090 and is licensed by the cabinet to provide basic, advanced, or basic or advanced specialized levels of emergency and non-emergency health care and transportation.]

(3) "Basic life support" (BLS) means ~~[a basic life support ambulance provider which:~~

~~(a) Utilizes at least two (2)]~~ certified or licensed emergency medical personnel ~~who [to] provide prehospital medical care such as:~~

- ~~(a) [4-] First aid;~~
- ~~(b) [2-] Cardiopulmonary resuscitation;~~
- ~~(c) [3-] Airway management;~~
- ~~(d) [4-] Cervical spine control;~~
- ~~(e) [5-] Breathing assistance;~~
- ~~(f) [6-] Hemorrhage control; and~~
- ~~(g) [7-] Basic patient movement procedures[; and~~

~~(b) Meets the requirements established in 902 KAR 14:080, Sections 1 through 7 and 8, when applicable, and is licensed by the cabinet to provide health care and transportation on an emergency and nonemergency basis to persons who:~~

- ~~1. Are sick, injured, or otherwise incapacitated; and~~
- ~~2. May require immediate stabilization and continued medical response and intervention during transit or upon arrival at the patient's destination to safeguard the patient's life or physical well being].~~

(4) "Continuing education" means the provision of information or training within the scope of an individual's level of certification.

(5) "Licensing agency" means the Cabinet for Health Services [Human Resources], Department for Public Health [Health Services].

(6) "Nonemergency health transportation (NEHT)" means an ambulance provider which meets the requirements of 902 KAR 14:060 and is licensed by the cabinet to provide health care transportation on a scheduled basis to individuals whose impaired health condition requires special transportation considerations, supervision, or handling but does not indicate a need for emergency medical treatment during transit or emergency medical treatment upon arrival at the final destination. NEHT providers shall not transport a patient who requires basic or advanced life support or a patient who has in place a temporary invasive device or equipment such as an intravenous administration device or airway maintenance device, excluding urinary catheters, or a patient who requires close observation or monitoring preceding or following an invasive technique.

(7) "Specialized ground ambulance provider" means a Class I, Class III, [BLS or ALS ground] or air ambulance provider which ~~[meets the requirements of 902 KAR 14:080, Section 11 or 902 KAR 14:090 and]~~ is licensed by the cabinet to provide health care and transportation on an emergency or nonemergency scheduled basis that:

- (a) May be unavailable to the general public; and
- (b) Has specialized or limited functions such as interfacility transfer of critical patients who may require special consideration of:
 - 1. Equipment requirements;
 - 2. Personnel requirements; or
 - 3. Hours of operation.

~~[(8) "Tiered response emergency medical (TREM) services" means a specialized nontransportation ALS emergency medical service which shares staff and equipment with a licensed ALS or BLS ambulance provider through a written agreement for operation within a specific geographic service area.]~~

Section 2. Licenses. (1) A person shall not establish a BLS or ALS ground ambulance service, BLS or ALS air ambulance service, or NEHT service[; or a TREM service] in Kentucky without first obtaining a certificate of need ~~[from the Kentucky Health Policy Board (referred to as the board)]~~ and shall not operate a BLS or ALS air or ground ambulance service, or NEHT service[; or TREMS] without first obtaining a Kentucky Ambulance License, Form EMS-2 (12/94), incorporated by reference, from the licensing agency.

(2) Effective July 15, 1996, the licensing agency shall not license a new BLS or ALS ground ambulance service.

(3) Effective December 31, 1996, the licensing agency shall not license a new NEHT service.

(4) Effective July 15, 1996, the following classes of ambulance providers shall be licensed: Class I, Class II, Class III, Air, or NEHT. A person shall not establish a Class I, Class II, Class III, or air ambulance service in Kentucky without first obtaining a certificate of need and shall not operate a Class I, Class II, Class III, or air ambulance service without first obtaining a Kentucky Ambulance License, Form EMS-2 (6/96), incorporated by reference, from the licensing agency.

(5) The license shall be conspicuously posted in a public area of the facility.

(6) An ambulance provider shall file an application with the Department for Public Health, Emergency Medical Services Branch, 275 East Main Street, Frankfort, Kentucky 40621 in accordance with the following schedule:

(a) An ambulance provider licensed prior to July 15, 1996 shall file ~~[(3)]~~ a "Kentucky Application for Ambulance Service Licensing", Form EMS-1 (10/94), incorporated by reference.

(b) An ambulance provider licensed after July 15, 1996 shall file a "Kentucky Application for Ambulance Service Licensing", Form EMS-1 (6/96), incorporated by reference.

(c) An ambulance provider licensed as a NEHT service prior to December 31, 1996 shall file ~~[-or]~~ an "Application for License to Operate a Nonemergency Health Transportation Service", Form EMS-1N (12-94), incorporated by reference~~[-, shall be filed with the Department for Health Services, Emergency Medical Services Branch, 275 East Main Street, Frankfort, Kentucky 40621].~~

(7) ~~[(4)]~~ An applicant for a license shall, as a condition precedent to licensing or relicensing, be in compliance with applicable administrative regulations under 902 KAR Chapter 14.

(8) ~~[(5)]~~ The licensee shall, as a condition of licensing or relicensing, be in compliance with the reporting requirements established by the licensing agency ~~[and the board]~~, unless otherwise exempted by statute:

(9) ~~[(6)]~~ The licensee shall maintain and submit completed reports required by:

- (a) KRS 216B.410;
- (b) 902 KAR 14:080 ~~[4:040]~~, Section 3(2)(a);
- (c) 902 KAR 14:082, Section 3(2)(a) ~~[4:050, Section 6];~~
- (d) 902 KAR 14:084; or
- (e) 902 KAR 14:090, Section 10; and
- ~~(f) The licensing agency[; or~~
- ~~(g) The Kentucky Health Policy Board].~~

(10) ~~[(7)]~~ A license shall expire one (1) year following the date of issuance, unless otherwise provided in the license certificate.

(11) ~~[(8)]~~ A license may be renewed upon payment of the prescribed fee and compliance with the provisions for licensing.

(12) ~~[(9)]~~ A license to operate shall be issued only for the person, service area, and premises, including the number of ambulances named in the application, and shall not be transferable.

(13) ~~[(10)]~~ A new application shall be filed if a change of ownership occurs. A change of ownership for licenses shall be deemed to occur if more than fifty (50) percent of an existing facility, capital stock, or voting rights of a corporation is purchased, transferred, leased, or acquired by comparable arrangement by one (1) person from another.

(14) ~~[(11)]~~ Upon filing a new application for a license due to change of ownership, the new license shall be automatically issued for the remainder of the current licensure period. No additional fee shall be charged for the remainder of the licensure period.

(15) ~~[(12)]~~ There shall be full disclosure to the licensing agency of the changes, such as name and address, of:

(a) A person having direct or indirect ownership interest of ten (10) percent or more in the service;

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- (b) Officers and directors of the corporation, if a service is organized as a corporation; and
(c) Partners, if a provider is organized as a partnership.

Section 3. Licensing Inspections. (1) Compliance with licensing administrative regulations ~~may~~ shall be ascertained through on-site inspections of the provider by representatives of the licensing agency.

(2) Representatives of the licensing agency shall have access to the service during hours the service operates.

(3) A regulatory violation identified during an inspection ~~[the inspections]~~ shall be transmitted in writing to the provider by the licensing agency.

(4)(a) The provider shall submit a written plan for the elimination or correction of the regulatory violations to the licensing agency within ten (10) days of receipt of the statement of violation.

(b) The plan shall specify the date by which the violation shall be corrected.

(5)(a) Following a review of the plan, the licensing agency shall notify the provider in writing of the acceptability of the plan. The licensing agency may conduct a follow-up visit to verify compliance with the plan.

(b) If a portion or all of the plan is unacceptable, the licensing agency shall specify the reasons for the unacceptability. The provider shall modify or amend the plan and resubmit it to the licensing agency within ten (10) days after receipt of notice that the plan is unacceptable.

(6) Unannounced inspections may be conducted on complaint allegations, follow-up visits, and ~~[annual]~~ relicensing inspections. Inspections shall be conducted utilizing the procedures outlined under this section.

(7) The licensing agency may deny, revoke, modify, or suspend the license of a provider which:

(a) Fails to submit, amend, or modify a plan of correction in order to eliminate or correct regulatory violations;

(b) Fails to eliminate or correct regulatory violations;

(c) Falsifies an application for licensing;

(d) Tampers with, alters, or changes a license issued by the licensing agency;

(e) Attempts to obtain or obtains a license by fraud, forgery, deception, misrepresentation, or subterfuge;

(f) Provides false or misleading advertising;

(g) Falsifies, or causes to be falsified, a patient record or ambulance run report;

(h) Provides an unauthorized level of service;

(i) Has a history of staff violations which have resulted in disciplinary action under 902 KAR 13:020 and 13:090;

(j) Fails to provide the licensing agency or its representative with true information upon request, or obstructs an investigation regarding alleged or confirmed violations of administrative regulations promulgated under:

1. KRS 211.950 to 211.958;

2. KRS 211.960 to 211.968;

3. KRS 211.990(5); and

4. KRS 216B; and

5. KRS 311.654; or

(k) Issues a check for a license on an invalid account or an account with insufficient funds to pay the fee specified in Section 4 of this administrative regulation.

(8) The licensing agency may issue an order directing a provider to immediately cease and desist operating an ambulance, or providing services, if the licensing agency has reasonable cause to believe that an ambulance or service is unsafe or is being operated in an unsafe or unprofessional manner that is likely to cause harm or create imminent danger to the health and safety of the public.

(9) The licensing agency ~~[or the board]~~ may deny, revoke, modify, or suspend the license of an ambulance provider if an owner of the service is convicted of obtaining a fee by:

1. Fraud or misrepresentation; or

2. Submitting fraudulent or misleading claims for reimbursement to individuals, private insurance companies, or governmental agencies;

(10) The licensing agency shall provide notice and an opportunity for an administrative hearing related to denial, revocation, modification, or suspension of a license in accordance with the provisions ~~[the provisions]~~

~~1. Policies and administrative regulations of the board; and~~

~~2. Provisions]~~ of KRS 216B.105.

Section 4. Fee Schedule. The annual licensing fee, including renewals, shall be as follows:

(1) Nonvolunteer ambulance providers ~~[and TREC service]~~: eighty (80) dollars;

(2) Volunteer ambulance providers ~~[and TREC service]~~ in which a majority of the ambulance runs are made by attendants who do not receive compensation for their work: twenty (20) dollars.

Section 5. Material Incorporated by Reference. The following material is incorporated by reference and may be inspected, obtained, or copied at the Office of the Commissioner, Department for Public Health ~~[Services]~~, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. until 4:30 p.m., Monday through Friday:

(1) Kentucky Ambulance License, Form EMS-2 (12/94).

(2) Kentucky Application for Ambulance Service Licensing, Form EMS-1 (10/94).

(3) Application for License to Operate a Nonemergency Health Transportation Service, Form EMS-1N (12/94).

(4) Kentucky Ambulance License, Form EMS-2 (6/96).

(5) Kentucky Application for Ambulance Service Licensing, Form EMS-1 (6/96).

RICE C. LEACH, Commissioner

JOHN MORSE, Secretary

APPROVED BY AGENCY: July 8, 1996

FILED WITH LRC: July 12, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1996 at 9 a.m. at the Health Services Auditorium, 1st Floor, CHS Building. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1996 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing will be canceled. This hearing is open to the public. Any person who attends will be given the 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, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing or written comments on the proposed administrative regulation to: William K. Moore, Jr., Acting General Counsel, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, Telephone: (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Contact person: Robert Calhoun

(1) Type and number of entities affected: Approximately 300 ground and air ambulance providers and approximately 10 nonemergency health transportation providers.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. This administrative regulation established classes of ambulance providers. It will have no effect on the cost of living in the state.

(b) Cost of doing business in the geographical area in which the

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administrative regulation will be implemented, to the extent available from the public comments received. Class II ambulance providers may incur additional expense to meet licensing requirements. The public comments received at the Notice of Intent hearing indicated that those providers are willing to accept the increase in the cost of doing business in order to meet the new standards for licensing.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There are no additional compliance, reporting, or paperwork requirements required in this administrative regulation.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: As above.

2. Continuing costs or savings: As above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements required in this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will continue existing licensing fees for ambulance providers. There will be no additional effect on state or local revenues due to the implementation of this administrative regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation will continue existing licensing fees for ambulance providers and nonemergency health care transportation services. This fee income and general funds will be utilized for implementation of this administrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will not create any additional economic impact on providers or the public.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation complies with the specific legislative changes made in House Bill 492 by the 1996 General Assembly and signed by the Governor to establish classes of ambulance providers and also complies with the requirements of KRS Chapter 13B related to administrative hearings. No alternatives were considered.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: When fully implemented, this administrative regulation will have a beneficial effect on the public's health in terms of improving the quality of ambulance services provided in Kentucky.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Without this administrative regulation ambulance providers in Kentucky would not be regulated and there would be no standards for prehospital care that could be enforced. This would have a detrimental effect on the public's health.

(c) If detrimental result would result, explain detrimental effect: No

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy will conflict, overlap, or duplicate this administrative regulation.

(a) Necessity or proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: The purpose of this

administrative regulation is to comply with the requirements of HB 492 as passed by the 1996 General Assembly and KRS Chapter 13B.

(11) TIERING: Is tiering applied? Yes. Tiering was applied because there are five (5) levels of ambulance providers: Air, Class I, Class II, Class III, and NEHT ambulance providers. There are separate requirements and standards for each level of service. In addition, special variances may be allowed for Specialized Services. The licensing fee is lower for voluntary service than for paid services.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This administrative regulation will affect a local government or part or division of that local government if it operates an ambulance service.

3. State the aspect or service of local government to which this administrative regulation relates. Any ambulance service operated by the local government.

4. How does this administrative regulation affect the local government or any service it provides? This regulation does not affect a local government in any additional manner. It merely establishes classes of ambulance providers as required by HB 492 and a uniform administrative hearing procedure in accordance with KRS Chapter 13B.

CABINET FOR HEALTH SERVICES

Department for Public Health

Division of Health Systems Development

(Amendment)

902 KAR 14:080. Class I [~~Basic and advanced life support~~] ground ambulance providers.

RELATES TO: KRS 211.950 to 211.956 [~~244.958~~], 216B.010 to 216B.130, 216B.990(1), (2)

STATUTORY AUTHORITY: KRS 211.952, 216B.042, EO 96-862, 1996 Ky. Acts ch. 233

NECESSITY AND FUNCTION: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 216B.042 requires [mandates] that the Cabinet for Health Services regulate [Human Resources promulgate administrative regulations and set standards related to licensing] health facilities and health services. KRS 211.952(2)(c) requires the cabinet to promulgate administrative regulations for the licensing, inspection, and regulation of ambulance providers. [transferred the responsibility for licensing, regulating and inspecting ambulance providers defined in KRS 211.950 from the Division of Licensing and Regulation in the Office of Inspector General to a single lead agency within the Department for Health Services, Cabinet for Human Resources.] This administrative regulation provides for the minimum licensing requirements for Class I [~~basic or advanced~~] ground ambulance providers.

Section 1. Definitions. (1) "Advanced life support (ALS)" means a Class I ground ambulance provider which:

(a) Utilizes certified and licensed emergency medical professionals to provide prehospital medicare care such as:

1. Basic life support services (BLS);

2. Advanced airway management such as endotracheal intubation;

3. Defibrillation;

4. Administration of intravenous fluids and pharmaceuticals under

the authority of a physician; and

(b) Meets the requirements established in Sections 1 through 10 of this administrative regulation and is licensed by the cabinet to provide health care and transportation on an emergency basis ~~[to persons who:~~

~~1. Are sick, injured, or otherwise incapacitated; and~~

~~2. May require immediate stabilization and continued medical response and intervention during transit or upon arrival at the patient's destination to safeguard the patient's life or physical well being].~~

(2) "Back-up ambulance" means an ambulance as defined in KRS 211.950 which complies with the requirements of Section 4(5) through (9) of this administrative regulation, and is licensed by the cabinet to provide emergency care and transportation if:

(a) One (1) of the licensed primary ambulances is not in service; and

(b) All of the primary ambulances are on runs and extreme circumstances dictate its use.

(3) "BLS" means a ground ambulance provider which:

(a) Utilizes at least two (2) certified or licensed emergency medical personnel to provide prehospital medical care such as:

1. First aid;
2. Cardiopulmonary resuscitation;
3. Airway management;
4. Cervical spine control;
5. Breathing assistance;
6. Hemorrhage control; and
7. Basic patient movement procedures; and

(b) Meets the requirements established in Sections 1 through 7 and Section 8, if applicable, of this administrative regulation and is licensed by the cabinet to provide health care and transportation on an emergency basis ~~[to persons who:~~

~~1. Are sick, injured, or otherwise incapacitated; and~~

~~2. May require immediate stabilization and continued medical response and intervention during transit or upon arrival at the patient's destination to safeguard the patient's life or physical well being].~~

(4) "Continuing education" means the provision of information or training within the scope of an individual's level of certification.

(5) "CPR" means cardiopulmonary resuscitation as conforming to the basic rescuer course of the American Heart Association; the National Safety Council; or the basic life support professional rescuer course of the American Red Cross, which shall include as a minimum one (1) and two (2) person CPR, airway obstruction, and airway adjuncts for adults, children, and infants.

(6) "Dispatch center" means the location where:

(a) Incoming calls are initially received requesting an ambulance; and

(b) Contact is made with the ambulance provider for direction to the patient scene.

(7) "Emergency medical technician (EMT)" means a person certified pursuant to 902 KAR 13:010 through 13:100.

(8) "Emergency medical technician-first responder" means a person certified pursuant to 902 KAR 13:110.

(9) "Employee" means ambulance provider medical personnel who may be paid or volunteer, full time or part time.

(10) "Interfacility care" means BLS or ALS emergency or nonemergency health care provided to a patient during ambulance transportation between two (2) health care facilities.

(11) "Licensing agency" means the Cabinet for Health Services ~~[Human Resources]~~, Department for Public Health ~~[Health Services]~~.

(12) "Paramedic (EMT-P)" means a person certified pursuant to 201 KAR 9:101 through 9:136.

(13) "Prehospital care" means emergency health care provided to a patient before and during ambulance transportation to a hospital.

(14) "Primary ambulance" means an (ground) ambulance as defined in KRS 211.950(1) which is licensed by the cabinet to be a

principle vehicle utilized by an ambulance provider for the provision of:

(a) Emergency care and transportation; or

(b) Nonemergency runs.

(15) "Response time" means the time from which a call is received at the dispatch center, until an ambulance arrives at the patient scene.

(16) "Provider" means a Class I ground ambulance provider as defined in KRS 211.950(2), and 211.952(1)(c)2.

(17) "Sharps" means a portion, or the whole unit, of medical supplies used in treatment procedures that may puncture the skin (e.g., needles, glass ampules, etc.).

(18) ~~[(47)]~~ "Specialized ground ambulance provider" means a Class I [BLS or ALS] ground ambulance provider which meets the requirements of Section 11 of this administrative regulation and is licensed by the cabinet to provide health care and transportation on a emergency or scheduled basis that:

(a) May be unavailable to the general public; and

(b) Has specialized or limited functions such as interfacility transfer of critical patients who may require special consideration of:

1. Equipment requirements;
2. Personnel requirements;
3. Hours of operation.

~~[(18)] "Tiered response emergency medical (TREM) service" means a specialized nontransportation ALS emergency medical service which shares staff and equipment with a licensed ALS or BLS ambulance provider through a written agreement for operation within a specific geographic service area.]~~

Section 2. Class I Ground Ambulance Licensing Requirements.

(1) The following licensing requirements shall apply to Class I [BLS and ALS ground ambulance] providers:

(a) A person shall not provide, advertise, or profess to engage in the provision of Class I [BLS, ALS], or specialized Class I [BLS or ALS] emergency medical care or transportation that originates in Kentucky without having first obtained a certificate of need and a license from the cabinet ~~[licensing agency]~~.

(b) An ambulance provider shall comply with local, state, and federal statutes and regulations.

(c) The license shall be displayed in a prominent place at the service base station. The following information shall be included on the license:

1. Identity and location of the base station;
2. Number and location of substations, if any, to be operated by the licensee;

3. Designation of the specific geographic area to be served by the licensee, allowing for a maximum of thirty (30) minutes initial response time for ninety-five (95) percent of the population within the service area for all emergency calls. The provider shall not be precluded from responding to calls outside of its geographic service area when providing:

- a. Mutual aid to another ambulance provider;
- b. Disaster assistance;
- c. Nonemergency transfers from damaged or closed health facilities; or

d. Interfacility care to residents of its service area, who are patients in facilities outside of its service area, for the purpose of returning the patients to their home service area or transporting them to another health facility;

4. Designation of the levels of care which the ambulance provider shall be authorized to provide (i.e., BLS or ALS, or specialized BLS or ALS); and

5. Designation of the number of primary ~~[and back-up]~~ ambulances to be operated by the ~~[BLS or ALS ambulance]~~ provider.

(d) ~~[Upon the effective date of this administrative regulation,]~~ No new or replacement back-up ambulances shall be licensed. ~~A [(e) Effective January 1, 1996, each ambulance]~~ provider with currently

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licensed back-up ambulances shall, upon application for renewal of the license, declare the total number of ambulances to be operated with no distinction made between primary and back-up vehicles. This total shall not exceed the total number of ambulances previously licensed.

(f) Each ambulance licensed shall be staffed, equipped, and available to respond to emergency ~~and non-emergency~~ calls at all times.

(g) ~~(As a minimum,)~~ Each ambulance provider shall provide the licensing agency with the serial number and license tag number of each ambulance licensed.

(h) The licensee shall:

1. Notify the licensing agency of any change in the number, type, or use of the ambulances to be operated; and

2. Meet the following requirements:

a. An ambulance shall not be operated until after the licensing agency has been notified and has verified, through a physical inspection, that it meets the requirements of this administrative regulation. If the ambulance represents an expansion of service (e.g., an increase in the number of ambulances), the licensing agency shall verify that a certificate of need has been granted prior to the inspection; and

b. The licensing agency shall be notified, on the next licensing agency business day, following disposition of any prior approved ambulance operated by the ambulance provider (i.e., discontinued from service, change in use by the same ownership, or sale to another identified licensed ambulance provider).

(i) The licensing agency procedures shall not preclude the ambulance provider from utilizing a replacement ambulance on a temporary basis if a previously approved ambulance is out of service for maintenance. The following requirements shall apply:

1. The licensing agency shall be immediately notified (or on the next business day) by phone of the need for an ambulance provider to operate a temporary replacement unit. Within five (5) days, the ambulance provider shall send the licensing agency:

a. Written notice of the make, model, license number, and vehicle identification number; and

b. Assurances that the temporary replacement ambulance meets the [unit will be staffed and equipped in accordance with] requirements of this administrative regulation;

2. A temporary replacement ambulance shall not be utilized for more than thirty (30) days unless the licensing agency has verified, through a physical inspection, that it meets the requirements of this administrative regulation.

3. If the ambulance provider plans to utilize the replacement ambulance for more than thirty (30) days, the ~~[ambulance]~~ provider shall notify the licensing agency of the anticipated length of time the replacement will be in use; and

4. ~~[3.]~~ The licensing agency shall be notified if the replaced unit is back in service.

(j) The licensing agency shall maintain identifying records on all ambulances according to established procedures.

(2) A licensed Class I [BLS or ALS ground ambulance] provider shall have on file proof of professional and vehicular liability insurance.

(3) The following situations shall be exempt from the provisions of this administrative regulation:

(a) First aid or transportation provided in accordance with KRS 216B.020(2)(f);

(b) A vehicle serving as an ambulance during a major catastrophe;

(c) An ambulance operated by the United States government; and

(d) An ambulance from an out-of-state licensed ambulance provider making a non-emergency run originating from a Kentucky facility for the purpose of returning a patient who is not a Kentucky resident to his state of residence.

Section 3. Class I [BLS and ALS Ground Ambulance] Management Requirements. A Class I [An] ambulance provider shall:

(1) Establish lines of authority (i.e., an organizational chart) to include the designation of an:

(a) Administrator responsible for assuring compliance with this administrative regulation during the daily operation of the service; and

(b) A designee who shall serve if necessary in the absence of the administrator.

(2) Maintain adequate records and reports at the ambulance service base station to be made available for review as deemed necessary by the cabinet, including:

(a) An original, microfilm, electronic equivalent as authorized under KRS 216B.410(1), or similar copy procedure of EMS run form, EHS-8A "Kentucky Emergency Medical Service Ambulance Run Report", for all runs originating in Kentucky.

1. Copies of completed run report forms shall be kept as required by KRS 216B.410(1) and guidelines established by the licensing agency in a manner of confidentiality and safekeeping for a minimum of five (5) years from the date on which the service was rendered, or in the case of a minor, until five (5) years after the minor reaches eighteen (18) years of age; and

2. The third copy of the run form, or an electronic equivalent, shall be forwarded to the cabinet within thirty (30) days following the end of the month in which the run occurred.

(b) Personnel files on each ambulance driver and attendant shall be maintained for:

1. A minimum of five (5) years, or longer if specified in local government archives approved schedules, following termination or retirement from employment; or

2. Five (5) years following the demise of the employee.

(c) Individual ambulance driver and attendant personnel files shall, as a minimum, contain evidence of:

1. Training;

2. Experience;

3. Current credentials including proof of CPR certification, or EMT or paramedic certification with corresponding numbers and expiration dates, or nursing or physician license;

4. Current and valid driver's license;

5. A preemployment criminal and Department of Transportation driver's records check for each individual added to the service ~~[after the effective date of this administrative regulation];~~

6. Health records to include:

a. Written evidence of a preemployment health assessment having been conducted by a physician or a licensed advanced registered nurse practitioner (ARNP) stating the employee is capable of performing assigned job duties; and

b. Health records which ~~[at a minimum]~~ meet the requirements of KRS 216B.410(3).

(3) Maintain and follow written administrative, personnel, medical, and other operational policies and procedures that are reviewed on an annual basis by the ambulance provider in order to assess their effectiveness. The policies and procedures shall be developed to include the following [minimum] areas:

(a) Organizational structure, staffing, and allocation of responsibility and accountability;

(b) Ambulance service mutual aid agreements and agreements with other ambulance providers;

(c) Personnel performance guidelines; and

(d) A plan to assure that a continuing education program shall be provided for its staff. The program shall include:

1. Evidence of continuing education for staff regarding acquired immune deficiency syndrome (AIDS) and infection control, including the handling of infectious waste in accordance with Centers for Disease Control guidelines.

2. A plan for response to, and the protection and decontamination of, the patient, ambulance, equipment, and staff if called upon to transport a patient exposed to hazardous chemicals;

3. A plan for assessing all other staff continuing education needs, with a coordinated development of methods to meet those needs; and
4. The maintenance of training rosters or other written records to support continuing education conducted by, or at the request of, the licensee.

(e) A plan for the quality assessment of patient care including a periodic review of ambulance run report forms, and evaluation of staff performance related to patient care.

(f) Policies and procedures concerning:

1. Vehicle maintenance;
2. Standard operating procedures (SOPS);
3. Patient protocols;
4. Ambulance response;
5. Transport limitations; and
6. Patient destination.

Section 4. Class I [BLS and ALS Ground Ambulance] Operating Requirements. (1) A Class I [BLS or ALS] ambulance provider shall provide emergency care and transportation on a twenty-four (24) hour, seven (7) days a week, basis. This provision may be met through a call system or by a written mutual aid agreement with another Kentucky licensed Class I ambulance provider. The following priorities shall be followed for establishing a mutual aid agreement:

(a) A Class I provider which is licensed to serve the same service area;

(b) A Class I ground ambulance provider which serves part of the same service area or a contiguous service area.

(2) A Class I ground ambulance provider may also enter into additional mutual aid agreements with other Kentucky licensed Class I ground ambulance providers on an occasional basis to meet the needs of its service area for providing scheduled nonemergency transportation.

(3) If a Class I ground ambulance provider is unable to respond to an emergency call, the provider shall activate their mutual aid agreement with the closest available Class I ground ambulance provider.

(4) If a Class I ground ambulance provider receives and declines a request for an emergency interfacility transfer, the licensee shall activate its mutual aid agreement. If none of the mutual aid partners are willing or able to accept the emergency interfacility transfer, any Kentucky licensed Class I ground ambulance provider may accept the transfer.

(5) A provider who accepts a transfer outside of its service area shall require documentation from the facility or the provider licensed for the service area indicating that a good faith effort was made to utilize the provider licensed for the area.

(6) [(2)] If a Class I [BLS or ALS licensed] ambulance provider also makes nonemergency runs, at least [a minimum of] one (1) ambulance shall be held in reserve by the licensee to respond to emergency calls within the geographic service area of the licensee. [The licensee may enter into a written mutual aid agreement with another licensed BLS or ALS ambulance provider as a means to meet this requirement. If the only remaining ambulance of a licensee is being held in reserve for emergency prehospital runs, the licensee shall activate its mutual aid agreement if it receives and declines an emergency interfacility transfer request.]

(7) [(3)] In areas where fire departments, rescue squads, or other organizations provide first response to medical emergencies, in order to provide for the coordinated delivery of emergency medical services and the orderly transfer of patients to the ambulance service upon their arrival, the Class I [BLS or ALS] ambulance provider [which responds to medical emergencies for that area] shall enter into a mutual aid agreement with the first response organization. These agreements shall be in writing and shall address the following:

(a) The type of mutual aid assistance to be provided (e.g., ALS or BLS medical care, [ambulance service, tiered] ALS or BLS medical first response, extrication);

(b) Response personnel including levels of training and provisions for joint in-service training where appropriate;

(c) Response vehicles including unit identifiers and the station or location from which the vehicles will be operated;

(d) How and what manner the mutual aid agreement shall [will] be activated including dispatch and notification procedures;

(e) Radio and other communications procedures between the ambulance provider and the other response agency;

(f) On-scene coordination and scene control including medical direction when several agencies respond to same incident;

(g) Exchange of patient information, records, and reports;

(h) Terms of the agreement including effective date and provision for amendment or termination.

(8) [(4)] Ambulances used in the provision of Class I [BLS or ALS] ambulance services shall:

(a) Be maintained in good operating condition and in full repair;

(b) Be designed to provide for the medical care and transportation of patients;

(c) Comply fully with ambulance design criteria contained in "Federal Specifications for Ambulances", KKK-A-1822 D (11/94) (GSA federal specifications) in effect at the time the ambulance is manufactured, except for color and provider identification.

(d) Comply with KRS 189.910 through 189.950 regarding the use of lights and siren.

(9) [(5)](a) The Class I [BLS or ALS] ambulance provider shall require that a certification decal or sticker be supplied by the manufacturer of newly purchased ambulances, indicating that the ambulance met GSA federal specifications on the date it was manufactured. The certification decal shall be located on a permanent surface, such as in the ambulance oxygen tank compartment, or as later identified in a GSA federal specification revision.

(b) A Class I [BLS or ALS] ambulance provider shall require, for units that are later modified, the conversion company to supply a letter to verify the modification meets or exceeds the GSA federal specification requirements, except for color or provider identification, as incorporated in the GSA federal specifications on the ambulance original date of manufacture.

(10) [(6)] In addition to the GSA federal specifications, the following state licensing requirements shall be maintained:

(a) The heating system shall maintain a temperature of not less than sixty-five (65) degrees Fahrenheit in the driver and patient compartments in winter weather conditions;

(b) The air conditioning system shall maintain a temperature of not more than eighty-five (85) degrees Fahrenheit in the driver and patient compartments in summer weather conditions; and

(c) The name of the ambulance provider shall appear on the exterior surface of the ambulance.

(11) [(7)](a) A preventive maintenance program for each ambulance and its equipment shall be developed and implemented to keep them in optimum working order to protect the health and safety of the patient and ambulance personnel.

(b) Documentation shall be maintained by the ambulance provider to support evidence of periodic inspections or calibrations required for maintenance and operation of the ambulance and its equipment.

(12) [(8)] The interior of the ambulance and its equipment shall be checked after each use to ensure that they are kept and maintained in a clean and sanitary condition, unless precluded by emergency conditions.

(13) [(9)] Nothing in this administrative regulation shall be construed to prevent a licensed Class I [BLS or ALS ambulance] provider from providing medical [tiered] first response emergency prehospital care [medical service] at or below the level for which they are licensed through the utilization of the following:

(a) Designated, provider owned response vehicles;

(b) Provider or personally owned supervisor vehicles;

(c) Employee personally owned vehicles.

(14) [(10)] The licensed Class I [BLS or ALS ground ambulance]

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provider shall determine the minimum equipment required for tiered response vehicles operating under their license.

~~(15) Class I medical [(11) BLS or ALS ground ambulance service tiered]~~ first response vehicles shall be operated in accordance with the provisions of KRS 189.910 to 189.950.

~~(16) [(12)]~~ Vehicles used to provide medical ~~[tiered]~~ first response ~~[emergency medical]~~ services shall be insured by the employee or through the insurance policies of the Class I [BLS or ALS ground ambulance] provider.

~~(17) [(13)]~~ A communications system shall be developed, coordinated, and maintained by each ambulance provider. The communication system shall meet the following requirements:

(a) If a local or regional dispatch center or 911 arrangement exists for all or part of the service area of a provider, the ambulance provider shall have a signed affiliation agreement with the dispatch center for coordination of emergency calls. If an ambulance provider is unable to secure a written affiliation agreement with the dispatch center, the ambulance provider shall have on file proof of a good faith attempt to obtain an affiliation agreement;

(b) A Class I ambulance [BLS and ALS ambulances] shall be equipped with two (2) way radio communication equipment capable, under normal conditions, of contacting the ambulance dispatch center and the receiving hospital;

(c) A minimum of one (1) portable communication device per ambulance, on the ambulance radio frequency, shall be provided for personnel if away from the ambulance;

(d) A Class I [BLS or ALS ambulance] provider shall have an acceptable plan to assure that all calls are promptly answered, and runs are dispatched in an expedient manner in accordance with subsection (1) of this section; and

(e) An ambulance provider shall provide orientation to all drivers and attendants related to communication protocols that have been established by the service.

~~(18) [(14)]~~(a) In accordance with policies and procedures of the Class I [BLS or ALS ambulance] provider concerning patient destination and ambulance response and transport limitations, a patient shall be transported to:

1. The hospital emergency room of the patient's choice; or
2. The hospital emergency room chosen by the patient's physician.

(b) Nothing in this subsection shall preclude Class I [BLS or ALS ambulance] provider personnel from transporting a patient to:

1. A hospital emergency room other than the one (1) chosen by the patient or his doctor, or an appropriate emergency medical facility chosen by the attendant, if the attendant determines that it shall be necessary in order to save the patient's life or limb.

2. A hospital emergency room or emergency medical facility other than the one (1) chosen by the patient or his physician if the Class I [ambulance] provider is operating under an approved local or regional diversion plan or medical triage protocols developed in conjunction with a consortium of physicians, hospitals, and ambulance providers, and which has been approved by the Kentucky Emergency Medical Services Council under KRS 211.952(5).

(c) The Kentucky emergency medical service ambulance run report form (EHS-8A) shall require ambulance service personnel to state:

1. The name and city of the hospital to which the patient was transported; and
2. If the destination was chosen by the:
 - a. Patient;
 - b. Patient's physician; or
 - c. Medical service personnel. If the destination was chosen by the medical service personnel, the attendant shall document the medical necessity on the form's case narrative section.

Section 5. Basic Life Support Personnel. (1) A BLS Class I [ground ambulance] provider shall be staffed to provide, at least [as

~~a minimum,~~ two (2) attendants for each run. One (1) attendant shall remain with the patient at all times during transport;

(2) There shall be no more patients, personnel, and other persons than can be safely secured by means of seat safety belts or similar devices in the ambulance during transportation; and

(3) All personnel shall be capable of performing their job duties, and shall not cause the patient or other personnel any undue jeopardy.

~~(4) [As a minimum,~~ The driver on each BLS or ALS ambulance run shall:

(a) Be at least eighteen (18) years of age, with current motor vehicle operator's license;

(b) Have at least two (2) years of licensed driver/operator experience;

(c) Complete a defensive driving training program that is developed by the ambulance provider or in conjunction with another agency or organization. The defensive driving training program shall be repeated for each driver at least every four (4) years.

1. ~~[As a minimum,~~ The training program shall consist of four (4) hours review of driving a vehicle under emergency conditions;

2. Documentation shall be available to support training in at least the following areas:

a. Review of KRS 189.910 through 189.950 regarding emergency vehicles.

b. Forward and back-up driving maneuvers in a controlled situation, such as in an obstacle course designed specifically for this purpose.

c. Review of defensive driving techniques and procedures by hands-on experience or exposure by visual aids, such as video tapes, slides, or planned demonstrations.

(5) One (1) ambulance attendant on each prehospital emergency or nonemergency BLS ground ambulance run shall be certified or licensed for one (1) of the following levels:

(a) Emergency medical technician (EMT);

(b) Paramedic;

(c) Registered nurse (RN) licensed by the Kentucky Board of Nursing (KBN); or

(d) Physician licensed by the Kentucky Board of Medical Licensure (KBML).

(6) The second ambulance attendant, who may also be the driver, ~~[as a minimum]~~ shall have certification or licensing for one (1) of the following levels:

(a) EMT-first responder;

(b) EMT;

(c) Paramedic;

(d) RN licensed by the KBN; or

(e) Physician licensed by the KBML.

(7) Personnel who on occasion may serve as an attendant or a driver shall meet the qualifications for both roles. Documentation shall be required in personnel files for personnel who:

(a) Serve as drivers only in a three (3) person crew; and

(b) Do not render any type of first aid or medical treatment; or

(c) Serve as attendants only.

(8) Ambulance personnel required to meet patient needs for interfacility or facility-to-home patient transports may be determined by the attending physician and the initiating facility, in conjunction with the ambulance service staff.

(9) A Class I ground ambulance service may provide nonemergency transportation to individuals for whom no medical care is required or indicated during transport and for whom no emergency medical treatment is provided at the final destination. If a Class I provider [ground ambulance service] chooses to make such runs, the ambulance run report form must be completed for each run to show that no medical care was required or indicated. For such runs, the ambulance shall be staffed by a minimum of one (1) person, who may also be the driver, licensed or certified for one (1) of the following levels:

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- (a) EMT-first responder;
- (b) EMT;
- (c) Paramedic; or
- (d) Licensure as a registered nurse by the KBN or as a physician by the KBML.

Section 6. Equipment and Supplies. A Class I ground ambulance used in the provision of emergency care and ambulance transportation shall carry and maintain, in full operational order, the following minimum equipment and supplies:

- (1) Suction, ventilation, and blood pressure equipment.
 - (a) Fixed and portable suction apparatus including:
 - 1. Rigid tonsillar catheters; and
 - 2. Flexible catheters in the sizes six French (6F), 8F, 10F and 14F;
 - (b) Disposable bag-valve-mask ventilation units in 250 ml, and 1000 ml with oxygen reservoir with adult and infant size masks (capable of use with oxygen);
 - (c) Nasopharyngeal and oropharyngeal airways in newborn, infant, child, and adult sizes; and
 - (d) Adult, obese adult, infant, and child sphygmomanometer cuffs with stethoscope. A permanently mounted sphygmomanometer shall not satisfy this requirement.
- (2) Oxygen equipment.
 - (a) Fixed and portable oxygen tanks with a filled, minimum size D, secured spare portable cylinder;
 - (b) Pressure gauge and flow rate regulator (range of zero to fifteen (15) liters per minute);
 - (c) Oxygen humidifier attachment for use on the fixed oxygen tank;
 - (d) Adaptor and tubing;
 - (e) Transparent simple oxygen masks for adults and children~~[-~~ and infants];
 - (f) Transparent nonrebreather oxygen masks for adults, children, and infants; and
 - (g) Nasal cannulas for adults, children, and infants.
- (3) Bandages and tape.
 - (a) ~~[Minimum of]~~ Two (2) sterile universal dressings at least ten (10) inches by thirty (30) inches, compactly folded and packaged;
 - (b) ~~[Minimum of]~~ Twenty-five (25) sterile gauze pads, four (4) inches by four (4) inches;
 - (c) ~~[Minimum of]~~ Ten (10) soft roller self-adhering bandages, various sizes;
 - (d) ~~[Minimum of]~~ Four (4) rolls of adhesive tape, minimum of two (2) sizes;
 - (e) ~~[Minimum of]~~ Ten (10) triangular bandages with large safety pins; and
 - (f) ~~[Minimum of]~~ Two (2) sterile burn sheets.
- (4) Miscellaneous supplies.
 - (a) Eye protector pads and shields;
 - (b) ~~[Minimum of]~~ One (1) roll of aluminum foil, or an occlusive substitute approved by the licensing agency;
 - (c) Shears for bandages;
 - (d) Hand held flashlight capable of providing adequate lighting to assess a scene or a patient away from the ambulance;
 - (e) ~~[Minimum of]~~ Two (2) penlights;
 - (f) ~~[Minimum of]~~ Two (2) sterile obstetrical kits;
 - (g) One (1) bottle of syrup of ipecac (with current expiration date) or one (1) bottle of activated charcoal (if in suspension, shall have current expiration date); and
 - (h) Sterile irrigation fluids with current expiration date, if stocked on the ambulance, shall be obtained and maintained according to local, state, and federal statutes and regulations.
- (5) Splints and immobilization devices.
 - (a) Lower extremity traction splint, or equivalent as approved by the cabinet, for use in EMT training;
 - (b) Splints for arm, leg, and foot (e.g., inflatable air splints,

padded boards, ladder splints, or acceptable substitute approved by the cabinet);

- (c) Immobilization devices.

1. Short spine board or other acceptable extrication device, as determined by the cabinet; and

- 2. Long spine board with cervical immobilization accessories;

3. An orthopedic "scoop" stretcher or other full-body immobilization device as determined by the cabinet.

(d) Rigid, stiff cervical collars in large, medium, small adult, no-neck, and pediatric sizes;

(e) A short spine board or an acceptable substitute, as determined by the cabinet, shall be provided for administering CPR.

- (6) Safety supplies and equipment.

(a) ~~[Minimum of]~~ Two (2) five (5) pound size, ABC multipurpose fire extinguishers, approved by Underwriters Laboratory, Coast Guard, or Factory Mutual. One (1) shall be located in the driver compartment and the other located in the patient compartment;

(b) Multiposition stretcher with wheels and a mechanism to secure the stretcher while in transit;

(c) ~~[Minimum of]~~ One (1) pocket mask with an isolation valve per patient attendant;

(d) ~~[Minimum of]~~ One (1) clean scrub gown (or substitute, such as disposable coveralls), disposable mask, and gloves per patient attendant;

(e) ~~[Minimum of]~~ One (1) particulate filter face mask per attendant meeting federal standards set by the Occupational Safety and Health Administration (OSHA) and one (1) face mask per patient meeting OSHA standards for use during transport of patients known to be infected with tuberculosis;

(f) A means of cleansing the hands shall be provided, such as the provision of a solution or disposable towelettes;

- (g) Hospital type disinfectants;

- (h) Plastic bags for disposal of waste materials;

(i) Puncture resistant containers for disposal of sharp objects, if sharps are carried;

(j) ~~[A minimum of]~~ Two (2) clean blankets, sheets, and pillowcases;

- (k) Tissues or similar substitute; and

- (l) An emesis container or similar substitute.

(7) Additional medical supplies and equipment desired for storage in the ambulance for authorized persons responding to the scene who are licensed or certified to provide medical skills that require training beyond the authorized EMT level may be considered for approval by the cabinet. For eligibility, the ambulance provider shall include documentation to assure a system of accountability for the storage and handling of the additional medical supplies and equipment. The cabinet shall have the authority to deny approval of the arrangement if it is determined that the arrangement shall not be in the best interest of quality patient medical care or safety of the patient and personnel.

Section 7. Extrication and Other Rescue Equipment. (1) ~~[For response to trauma scenes,]~~ A Class I ~~[ground ambulance]~~ provider shall provide and maintain in full operational order the following minimum light access and extrication equipment on the ambulance:

- (a) ~~[Minimum of]~~ Two (2) pairs of eye protection goggles;

- (b) ~~[Minimum of]~~ Two (2) pairs of heavy work gloves;

- (c) ~~[Minimum of]~~ Two (2) hard hats;

(d) ~~[Minimum of]~~ One (1) spring loaded window punch or acceptable substitute; and

(e) ~~[Minimum of]~~ Six (6) reflective triangles, at least ten (10) inches in height, flares, or equivalent warning devices.

(2)(a) For response to trauma scenes, a ground ambulance provider shall~~[-as a minimum,]~~ provide one (1) vehicle, which need not be an ambulance, equipped with the following fully operational, more extensive access and extrication equipment:

- 1. ~~[Minimum of]~~ Two (2) fifty (50) foot long seven-sixteenths (7/16)

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or one-half (1/2) inch static or dynamic nylon ropes;

2. ~~[Minimum of]~~ One (1) pair of pliers, vise grip;
3. ~~[Minimum of]~~ One (1) wrench, with adjustable, stable open end;
4. ~~[Minimum of]~~ One (1) set of screw drivers, four (4) sizes, regular blade;
5. ~~[Minimum of]~~ One (1) set of screw drivers, four (4) sizes, Phillips type;
6. ~~[Minimum of]~~ One (1) double action tin snip;
7. ~~[Minimum of]~~ One (1) crow bar with pinch point;
8. ~~[Minimum of]~~ One (1) hacksaw with twelve (12) blades; and
9. ~~[Minimum of]~~ One (1) hammer, three (3) pound size;
10. ~~[Minimum of]~~ One (1) fire axe;
11. ~~[Minimum of]~~ One (1) wrecking bar;
12. ~~[Minimum of]~~ One (1) bolt cutter, with ~~[a minimum of]~~ one and one-fourth (1 1/4) inch jaw opening;
13. ~~[Minimum of]~~ One (1) four (4) ton porta-power jack and spreader tool;
14. ~~[Minimum of]~~ One (1) shovel, short handle, with pointed blade;
15. ~~[Minimum of]~~ One (1) shovel, long handle, with pointed blade;
16. ~~[Minimum of]~~ One (1) come-along tool; and
17. ~~[Minimum of]~~ Two (2) fire proof blankets.

(b) A Class I ~~[ground-ambulance]~~ provider which has a written agreement for this provision with a rescue squad, fire department, or an emergency service agency that meets the requirement established by the cabinet, shall not be required to provide the more extensive access and extrication equipment on the ambulance.

Section 8. ~~[Ambulance-Provider]~~ Medical Directors. (1) An ALS Class I ~~[ambulance]~~ provider shall have a written agreement with a physician medical director.

(2) An ALS Class I ~~[ambulance]~~ provider shall provide evidence that the medical director shall:

- (a) Be a physician licensed by the KBML;
- (b) Meet the qualifications specified in 201 KAR 9:171, Section 2(6). Evidence shall be on file to verify that the qualifications of the medical director have been reviewed by the KBML to assure compliance with 201 KAR 9:171, Section 2(6);
- (c) Have completed a residency program in emergency medicine approved by the Accreditation Committee for Graduate Education or be a physician who holds, or is in the process of completing, certification in advanced cardiac life support, and certification in advanced trauma life support or basic trauma life support, or have on file written approval from the KBML;
- (d) Assume responsibilities in accordance with 201 KAR 9:171, Sections 2(1) through (5); and
- (e) Assume other responsibilities as agreed upon between the medical director and the director of the ambulance service.

Section 9. Class I ~~ALS~~ ~~[Ground-Ambulance]~~ Providers. (1) A Class I ~~[An]~~ ALS provider shall meet the requirements of Sections 1 through 8 of this administrative regulation. It shall also meet the following additional requirements:

- (a) Evidence shall be on file to verify that the ALS written medical protocols have been reviewed by the KBML.
- (b) ALS services shall be provided on a twenty-four (24) hour, seven (7) days a week basis. This provision may be met through a call system or by a written mutual aid agreement with another Kentucky licensed Class I ALS provider.

(c) In order to foster development of full-time ALS coverage in counties where ALS services have not been previously available, the licensing agency may grant a waiver of the twenty-four (24) hour, seven (7) day a week requirement to a new ALS provider.

(d) A waiver of this requirement shall not exceed a period of twelve (12) months. If requested by the ALS provider, and approved by the licensing agency, additional waivers may be granted for just cause, such as inability to obtain certified paramedics.

(2) In addition to the BLS equipment required in Section 6 of this

administrative regulation, at the point of patient contact and transportation, a Class I ~~[an]~~ ALS provider shall carry on each vehicle, and maintain in full operational order, the supplies and equipment as provided for in protocols established in subsection 1(a) of this section and shall include the following:

- (a) An endotracheal intubation set consisting of :
 1. Laryngoscope handle in adult and pediatric sizes;
 2. Straight laryngoscope blades in sizes 0, 1, and 2;
 3. Curved laryngoscope blades in sizes 3 and 4;
 4. Extra batteries and bulbs for blades and handles; and
 5. Endotracheal tubes for oral and nasal placement in adult and pediatric sizes (uncuffed tube sizes 3.0, 3.5, 4.0, 4.5, 5.0, and 5.5; and cuffed tube sizes 5.5, 6.0, 6.5, 7.0, 7.5, and 8.0);
- (b) Stylettes in adult and pediatric sizes;
- (c) Magill forceps in adult and pediatric sizes;
- (d) One-half (1/2) inch wide twill tape or equivalent for securing endotracheal tubes;
- (e) Water soluble lubricant for lubrication of endotracheal and nasotracheal tubes;
- (f) Bite block;
- (g) A portable monitor defibrillator that:
 1. Is capable of displaying a visual display of cardiac electrical activity;
 2. Is capable of providing a hard copy of cardiac electrical activity measure;
 3. Is capable of delivering direct current energy over a variable range which is suitable for pediatric and adult usage;
 4. Has adult and pediatric external paddle electrodes capable of utilization for immediate monitoring of heart activity and delivery of countershock in both the adult and pediatric patient;
 5. Is capable of being operated from internal rechargeable batteries;
 6. Has synchronized countershock capability for cardioversion. This requirement applies only to equipment purchased after the effective date of this administration regulation;
 7. Has a patient monitoring cable which has the following accessories:
 - a. Electrode paste or gel or equivalent;
 - b. Electrode pads or equivalent for use with the patient monitoring cable; and
 - c. One (1) additional roll of paper for hard copy printout.
 - (h) Needles, sterile, disposable: minimum of three (3) sizes shall be maintained in eighteen (18) to twenty-five (25) gauge;
 - (i) Syringes, disposable: minimum three (3) sizes shall be maintained in 1cc to 30cc sizes;
 - (j) Appropriate containers for the collection of blood samples;
 - (k) Tourniquet appropriate for use with venipuncture procedure;
 - (l) Dextrostix (r) or equivalent for the measure of blood glucose levels;
 - (m) Disposable, individually packaged antiseptic wipes;
 - (n) Intravenous fluids, macrodrip and microdrip fluid sets, extension sets and accessory items;
 - (o) Intravenous catheter over needle devices in twelve (12) to (24) gauge;
 - (p) Butterfly needles in nineteen (19) and twenty-three (23) gauge;
 - (q) Intraosseous needles;
 - (r) Pediatric drug dosage tape or equivalent which shall provide easy reference for pediatric and infant treatment and drug dosages;
 - (s) Nasogastric tubes in size 5F, 8F pediatric sizes, sizes 10 to 18 French adult, and sizes 50 or 60 cc catheter tipped syringes or equivalent;
 - (t) Water soluble lubricant; and
 - (u) Infant or neonate suction apparatus.
- (3) A Class I ~~[An]~~ ALS provider shall stock and maintain drugs and medications as required by:
 - (a) Protocols established in accordance with Section 8 of this

administrative regulation; and

(b) Local, state, and federal statutes and regulations;

(4) Controlled drugs shall be stored in a locked compartment or equivalent approved by the cabinet. An ambulance provider which stores and utilizes controlled substances shall have protocols approved by the cabinet's drug control branch.

(5) With the exception of the supplies or equipment listed in subsection (2)(p), (q), (r), and (u) of this section, and supplies and equipment listed in subsection (2), (3), and (4) of this section which require specific sizes to accommodate adult, pediatric, and infant patients, nothing in this administrative regulation shall be construed to require a Class I ~~(an)~~ ALS provider to maintain the equipment required in subsections (2), (3) and (4) of this section if the equipment is not required by the medical protocols of the ALS Class I ground ambulance provider.

Section 10. Advanced Life Support Personnel. (1) Each licensed Class I ALS ambulance shall be staffed according to the requirements of 201 KAR 9:171, Section 5.

(2) If medical first ~~tiered~~ response emergency medical service vehicles are utilized by the Class I ALS provider, the vehicles shall:

(a) Be staffed by a minimum of one (1) person who has minimum training and current certification as a paramedic.

(b) Have available the minimum equipment and supplies required by Sections 6, 7, and 9 of this administrative regulation. This may be accomplished through the coordinated response of an ambulance from a separate ambulance provider under the provisions of a written mutual aid agreement on file with both providers.

Section 11. Class I Specialized ~~[BLS and ALS]~~ Providers. (1) A Class I ~~[BLS or ALS ground ambulance]~~ provider which does not provide prehospital emergency care to the general public, such as industrial based providers, neonatal transfers, and interfacility transfers requiring BLS or ALS shall be licensed as a Class I specialized ~~[ground ambulance]~~ provider.

(2) A BLS Class I specialized ~~[ground ambulance]~~ provider which complies with Sections 1 through 7, and 8 if applicable, of this administrative regulation, if applicable, and an ALS Class I specialized ~~[ground ambulance]~~ provider which complies with Sections 8 and 9 of this administrative regulation, may, with prior approval by the licensing agency, be allowed certain variances.

(3) A specialized license shall specify the limitations of the provider which have been approved by the cabinet;

(4) In reference to Section 4(1) of this administrative regulation, a Class I specialized ~~[ground ambulance]~~ provider shall not be required to provide emergency care and ambulance transportation on a twenty-four (24) hour, seven (7) days a week basis.

(5) In reference to Section 4(16) ~~[(14)]~~(a) of this administrative regulation, a Class I specialized ~~[ground ambulance]~~ provider shall not be required to have an affiliation agreement with a local or regional dispatch center or 911 service.

(6) A BLS Class I specialized ground ambulance provider shall be required to meet the equipment, supplies, and personnel requirements as listed in Sections 6 and 7 of this administrative regulation, with certain variations as approved by the cabinet.

(7) An ALS Class I specialized ground ambulance provider shall be required to meet the equipment, supplies, and personnel requirements as listed in Sections 6, 7, and 9 of this administrative regulation, with certain variations as approved by the cabinet.

(8) A Class I specialized ~~[emergency care]~~ provider desiring variations in equipment, supplies, or personnel shall submit the requests in writing for consideration and approval by the cabinet.

Section 12. Material Incorporated by Reference. The following material is incorporated by reference and may be inspected, obtained, or copied at the Office of the Commissioner, Department for Public Health ~~[Services]~~, 275 East Main Street, Frankfort, Kentucky 40621,

8 a.m. to 4:30 p.m., Monday through Friday.

(1) Form EHS-8A, "Kentucky Emergency Medical Service Ambulance Run Report," (2/91).

(2) "Federal Specifications for Ambulances", KKK-A-1822 D (11/94), General Services Administration, Federal Supply Service, Washington, D.C. 20406.

RICE C. LEACH, Commissioner

JOHN MORSE, Secretary

APPROVED BY AGENCY: July 8, 1996

FILED WITH LRC: July 12, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1996 at 9 a.m. at the Health Services Auditorium, 1st Floor, CHS Building. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1996 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing will be canceled. This hearing is open to the public. Any person who attends will be given the 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, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing or written comments on the proposed administrative regulation to: William K. Moore, Jr., Acting General Counsel, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, Telephone: (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Contact person: Robert Calhoun

(1) Type and number of entities affected: Approximately 280 ground ambulance providers.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. No comments were received at the Notice of Intent Hearing relative to the cost of living and employment. This administrative regulation will have no effect on the cost of living or employment in the state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No comments were received at the Notice of Intent Hearing relative to the cost of doing business. This administrative regulation will have no effect on the cost of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Additional compliance, reporting, or paperwork may be required in this administrative regulation for written mutual aid agreements when a service is operating outside its geographical service area for non-emergency transfers.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be no additional costs or savings within the cabinet.

2. Continuing costs or savings: As above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements required in this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues attributable to the

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requirements of this administrative regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation will continue existing licensing fees for ground ambulance providers. This fee income and general funds will be utilized for implementation of this administrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will not have any additional economic impact on providers or the public.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation complies with the specific legislative requirements of House Bill 492, as passed in the 1996 General Assembly, which requires the Cabinet to promulgate administrative regulations to address specific requirements for the licensing of Class I Ground Ambulance Providers. No alternatives were considered.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: When fully implemented, this administrative regulation will have a beneficial effect on the public's health by setting minimum standards for advanced life support and basic life support Class I Ground Ambulance Providers.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Yes

(c) If detrimental result would result, explain detrimental effect: There would be no minimum standards which ambulance providers would have to meet.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity or proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: The purpose of this emergency regulation is to comply with HB 492 passed by the 1996 General Assembly.

(11) TIERING: Is tiering applied? Yes. Tiering is applied because this administrative regulations addresses only basic and advanced life support services that may respond to emergencies.

CABINET FOR HEALTH SERVICES Department for Public Health Division of Health Systems Development (Amendment)

902 KAR 14:090. Air ambulance providers.

RELATES TO: KRS 211.950 to 211.956 ~~[244-968]~~, 216B.010 to 216B.130, 216B.990(1)(2)

STATUTORY AUTHORITY: KRS 211.952, 216B.042, EO 96-862, 1996 Ky. Acts ch. 233 ~~[246B-105]~~

NECESSITY AND FUNCTION: Executive Order 96-862, effective July 2, 1996 reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 216B.042 requires the Cabinet for Health Services to ~~[and 216B.105 mandate that the Kentucky Cabinet for Human Resources]~~ regulate health facilities and health services. KRS 211.952(2)(c) as amended in the 1996 Regular Session of the General Assembly requires the cabinet to promulgate administrative regulations for the licensing, inspection, and regulation of ambulance providers. ~~[transferred responsibility for licensing, inspecting, and regulating ambulance providers defined in KRS 211.950 to a single~~

~~lead agency under the supervision and direction of the Commissioner of Health.]~~ This administrative regulation sets forth the licensure and operation requirements for air ambulance providers.

Section 1. Definitions. (1) "Air ambulance service [provider]" is defined in 902 KAR 14:070.

(2) "Air medical communications specialist (ACS)" means an emergency medical technician (EMT) certified by the cabinet acting in the air medical communications environment with training appropriate to the mission of the air ambulance service who shall have documented training in the following areas:

(a) Federal Aviation Administration (FAA) regulations and Federal Communications Commission (FCC) regulations pertinent to air ambulance operations:

(b) Air medical radio communications;

(c) Flight coordination and utilization;

(d) Navigation and weather interpretation;

(e) Flight following; and

(f) Emergency procedures.

(3) "Airline transport pilot (ATP)" means a pilot who has received a certificate issued by the FAA which denotes the highest level of achievement a pilot may attain.

(4) "Advanced life support (ALS)" is defined in 902 KAR 14:070.

(5) "Basic life support (BLS)" is defined in 902 KAR 14:070.

(6) "FAA" means the Federal Aviation Administration.

(7) "FAR" means federal aviation regulations.

(8) "Flight nurse" means a registered nurse licensed by the Kentucky Board of Nursing (KBN) acting in the air medical environment with training appropriate to the mission of the individual air ambulance service who shall have documented service specific training in the following areas:

(a) Altitude physiology;

(b) Aircraft safety;

(c) Survival techniques; and

(d) Flight operations.

(9) "Flight paramedic" means a paramedic certified by the Kentucky Board of Medical Licensure (KBML) acting in the air medical environment with training appropriate to the mission of the individual air ambulance service. In addition, a flight paramedic shall have documented service specific training in the following areas:

(a) Altitude physiology;

(b) Aircraft safety;

(c) Survival techniques; and

(d) Flight operations.

(10) "Helipad" means a designated area, usually with a prepared surface, on a heliport, airport, landing or take-off area, apron or ramp, or movement area used for take-off, landing or parking helicopters.

(11) "IFR" means instrument flight rules.

(12) "Landing zone" means a prepared or unprepared area where a helicopter will be landing. The landing zone shall:

(a) Be large enough to accommodate the aircraft being used;

(b) Be free of dangerous obstacles;

(c) Have an adequate approach and departure path; and

(d) If landing at night, have a ground light source or sources marking boundaries.

(13) ~~[(3)]~~ "Licensing agency" means the Cabinet for Health Services ~~[Human Resources]~~, Department for Public Health ~~[Services]~~.

(14) "PIC" means pilot in command.

(15) "SIC" means second in command.

(16) "VFR" means visual flight rules.

Section 2. Air Ambulance Licensing. (1) A person shall not provide, advertise, or profess to engage in air ambulance services in Kentucky air ambulance services without having first obtained a certificate of need from the cabinet ~~[Kentucky Health Policy Board (referred to as the board)]~~ and a license from the licensing agency.

(2) [(4)] The license shall designate the specific Kentucky geographic area to be served and shall be displayed in a prominent place at the service base station.

(3) [(2)] The licensee shall designate the number of aircraft to be operated and provide the licensing agency with identifying information such as:

- (a) Type of aircraft;
- (b) Serial number; and
- (c) Aircraft identification.

(4) [(3)] Additional aircraft shall not be operated until the licensing agency has been notified and has verified that the aircraft meets the requirements of this administrative regulation. The provider shall not be precluded from utilizing a similarly equipped aircraft on a temporary basis without notifying the licensing agency if the primary aircraft is out of service for maintenance.

(5) [(4)] The licensee shall inform the licensing agency of:

- (a) Arrangements for securing aircraft for temporary use, if necessary, prior to initial licensure; and
- (b) Changes which occur after initial licensure, such as change of service directors or location where aircraft shall be based.

Section 3. Standards for the Operation of an Air Ambulance [Service]. (1) An air ambulance provider shall [comply with the following standards:]

(a) Have a physician medical director in accordance with the applicable requirements of Section (6) of this administrative regulation;

(b) Have established and advertised appropriate utilization criteria or protocols of air transport which have been reviewed and approved by the Kentucky Emergency Medical Services Council;

(c) Have an ongoing quality management program as outlined in Section 6(1)g of this administrative regulation.

(d) Have a mission statement which defines the precise geographical service area of the service, transport patient population and availability of services.

(4) An air ambulance shall not be utilized for the transport of a patient unless:

- (a) A request for transport has been made; and
- (b) The physician medical director or medical control physician, has reviewed the known medical information of the patient and has deemed that air ambulance transportation of the patient meets the utilization criteria or protocol of the service; or
- (c) The utilization protocol was used to determine appropriateness of air transport.

(5) An air ambulance service shall develop, implement and maintain records of a review process, quality improvement program, or other form of regular review of air ambulance utilization.

(a) The utilization review shall include an examination of compliance with the air transport criteria for appropriate utilization of air transport. Compliance utilization will be based on one (1) of the following:

- 1. The extent or severity of patient injury or illness;
- 2. Conditions that may have greatly delayed or prevented ground ambulance transportation, to the detriment of the patient; or
- 3. The need for a higher level of care than was available at the referring facility or location or during ground ambulance transportation to the receiving facility.

(b) A semiannual cumulative report of the findings of the review of air ambulance utilization shall be on file at the air ambulance service base station.

(6) A rotor wing air ambulance service operator shall provide proof that it:

- (a) Complies with FAR pertaining to maintenance inspections, flight, and duty time;
- (b) Complies with FAA and FAR required maintenance activities; and
- (c) Holds FAR required air ambulance operations specifications.

(7) A fixed wing air ambulance service operator shall provide proof that it:

(a) Complies with FAR which pertain to maintenance inspections, flight and duty time;

(b) Complies with FAA and FAR required maintenance activities; and

(c) Holds FAR required air ambulance operations specifications.

[(4)] The operator of the air ambulance service shall have a valid Air Taxi or Commercial Operators Certificate issued by the FAA.

[(2)] The air ambulance service shall be under the medical direction of a licensed physician who shall be qualified to provide emergency services for the patient being transported and whose responsibilities shall include:

- (a) Advising the medical flight attendant of precautions to be taken prior to and during the flight;
- (b) Developing staffing requirements for air ambulance transports based on the patient's condition;
- (c) Assuring that adequate supplies and equipment shall be on board to care for the patient being transferred;
- (d) Developing patient care protocols;
- (e) Monitoring and evaluating the quality of patient care;
- (f) Providing individual consultation to air ambulance personnel; and
- (g) Developing a continuing education program for all medical flight attendants.

Section 4. Air Ambulance Aircraft. (1) Fixed and rotor wing air ambulance aircraft shall:

(a) Have an entry that allows patient loading and unloading without tilting the patient greater than thirty (30) degrees from the horizontal axis;

(b) Be climate controlled to prevent temperature extremes that would adversely affect patient care;

(c) Be configured in such a way that air medical personnel shall have access to the patient in order to begin and maintain both basic and advanced life support;

(d) Have interior lighting adequate to ensure complete observation of the patient;

(e) Have the capability of shielding the cockpit from light in the patient care area during night operation;

(f) Have an electric inverter, with two (2) outlets, to convert direct current (DC) to alternating current (AC) for operation of specialized equipment, such as an isolette or intra-aortic balloon pump.

(g) Have equipment, stretchers, and seating:

1. Arranged so as not to block rapid egress by air ambulance personnel or patients; and

2. Affixed or secured in FAA approved racks, compartments, or strap restraints which meet FAR "G" loading requirements; and

(h) Have a patient stretcher or litter which:

- 1. Has the capability to raise the head of the patient; and
- 2. Has appropriate devices to secure the patient to the stretcher.

(2) Fixed wing aircraft shall:

(a) Be a twin engine type; and

(b) Be pressurized if patient flights are to exceed 6000 feet mean sea level.

Section 5. Air Ambulance Transportation Flight Personnel. (1) The rotor wing pilot in command shall possess commercial rotorcraft certification or ATP certification and a minimum of 2,000 rotorcraft flight hours as pilot in command.

(2) A rotor wing pilot shall:

(a) Be trained in the specific type of aircraft used by the provider as follows:

- 1. Have factory school or equivalent ground or flight training;
- 2. Have twenty-five (25) hours as pilot in command in the specific aircraft type prior to performing EMS missions.
- 3. Have completed a check ride which meets FAR part 135

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requirements; and

4. Have five (5) hours local area orientation which shall include mission specific night orientation of at least two (2) hours flight time.

(b) Be specifically trained and experienced in flying the terrain and conditions unique to the flight program;

(c) Be oriented to the health care system of the hospital; and

(d) Have recurrent training on an annual basis which shall include:

1. A factory review, or FAA approved equivalent, of the aircraft and their systems; and

2. A ground school refresher and competency training in emergency procedures.

(3) The fixed wing pilot shall possess a commercial pilot certificate with airplane, multiengine land, and instrument ratings or an ATP certificate with airplane and multiengine land ratings and shall:

(a) Be trained in the specific type of aircraft used by the provider as follows:

1. Have manufacturer's recommended aircraft training or approved equivalent; and

2. Have completed a check ride which meets FAR requirements.

3. The PIC shall have 100 hours as pilot in command in the specific aircraft and type prior to performing EMS missions; and

(b) Be readily available within a service defined call-up time to insure expeditious and timely response.

(c) Must have recurrent training every twelve (12) months which shall include:

1. A factory review of the aircraft and their systems; and

2. Appropriate curriculum as required by FAR.

(d) If flying IFR, a PIC shall have a minimum of 250 hours of instrument flying time which shall include:

1. 100 hours of night instrument flight time; and

2. No more than 125 hours of simulated instrument flight time. If an air ambulance provider is transporting a patient, the service shall be staffed by at least one (1) pilot with a valid commercial operator's certificate and one (1) medical flight attendant per patient.

(2) A medical flight attendant shall be:

(a) A certified emergency medical technician;

(b) A certified paramedic;

(c) A registered nurse; or

(d) A licensed physician.

(3) An attendant shall remain with the patient at all times during transport.

(4) If the air ambulance service transporting a patient is operating as an advanced life support unit, the medical attendant for each patient shall be:

(a) A certified paramedic;

(b) A registered nurse; or

(c) A licensed physician.

Section 6. Air Ambulance Medical Personnel. (1) An ALS air ambulance provider shall have a written agreement with a physician medical director who shall:

(a) Assume responsibilities in accordance with the provisions of 201 KAR 9:171, Sections 2(1) and (2);

(b) Provide medical consultation to and supervision of the medical flight personnel in accordance with the written agreement between the air ambulance service provider and the physician medical director;

(c) Grant authority for certified medical flight personnel to perform certain skills and procedures according to protocols;

(d) Retain and exercise authority to limit, suspend, or terminate approval of air ambulance medical flight personnel to perform skills and procedures previously granted under the established protocols;

(e) In his absence, approve or transfer authority for a supervising physician to temporarily act on the behalf of the air ambulance service during the period of absence.

(f) Participate in the continuing education of the air ambulance service medical flight personnel;

(g) Participate in the development of monthly quality improvement plans for the air ambulance service which shall include the: 1. Reason for and the appropriateness of air patient transport;

2. Mechanism or seriousness of injury or illness;

3. Interventions performed or maintained;

4. Transport outcome of the patient; and

5. Timeliness of the transport.

(2) If flight paramedics are utilized, an ALS air ambulance provider shall provide evidence that the qualifications of the medical director and medical protocols have been reviewed and recommended for approval by the Kentucky Emergency Medical Services Council and its Medical Standards Committee to assure compliance with the requirements of this section, and 201 KAR 9:171, Section 2(6).

(3) The medical director shall have completed a residency program in emergency medicine approved by the Accreditation Committee for Graduate Education or shall:

(a) Be a physician who holds, or is in the process of completing certification in the American College of Surgeon's Advanced Trauma Life Support;

(b) Be a physician who holds, or is in the process of completing certification in the American College of Emergency Physician's Basic Trauma Life Support or its equivalent; or

(c) Be a physician who has on file written approval from the licensing agency or lead agency which has been granted based on the physician's ability to document qualification by:

1. Patient population;

2. Experience; and

3. Current competency in patient care consistent with the mission statement of the air ambulance service provider.

(4) The medical director shall have on file documentation to verify completion of:

(a) Two (2) hours of education in altitude physiology and stressors of flight; and

(b) Two (2) hours of recurrent training in altitude physiology biannually.

(5) ALS flight medical personnel shall attend flight orientation training prior to acting as primary medical personnel. Flight orientation training shall include:

(a) Two (2) hours of altitude physiology;

(b) Aircraft specific operations and in-flight safety;

(c) Emergency egress and survival training;

(d) Scene safety;

(e) Use of extrication equipment;

(f) Scene triage;

(g) State EMS standard; and

(h) Communication equipment utilization and emergency procedures.

(6) Rotor wing patient missions shall have one (1) flight nurse and one (1) flight paramedic in attendance in the patient care area. A variance necessitated by staffing or patient care requirements shall not be permitted unless prior written approval is granted by the licensing agency.

(7) ALS fixed wing air ambulance service providers shall have a physician medical director who meets the requirements as described in subsection (1) of this section.

(8) ALS fixed wing patient missions shall have at least two (2) medical providers.

(9) The first attendant shall be:

(a) A flight nurse; or

(b) A licensed registered nurse qualified by specific patient population, experience, and current competency in emergency and critical care.

(10) The second patient attendant on an ALS fixed wing patient mission shall be:

(a) A licensed registered nurse qualified by specific patient population, experience, and current competency in emergency and critical care;

(b) A flight paramedic;

(c) A certified or registered respiratory therapist qualified by specific patient population, experience, and current competency in mission specific patient care; or

(d) A physician licensed and qualified by relevant training, experience, and current competency in mission specific patient care.

(11) A staffing variance necessitated by staffing or patient care requirements shall not be permitted unless prior written approval is granted by the licensing agency.

(12) BLS fixed wing patient missions shall have, in addition to the pilot, at least two (2) EMTs with air medical training consisting of:

(a) Flight physiology;

(b) Aircraft safety;

(c) Survival techniques;

(d) Two (2) hours of altitude physiology;

(e) Aircraft specific operations and in-flight safety;

(f) Emergency egress and survival training;

(g) State EMS standards;

(h) Communication equipment utilization; and

(i) Emergency procedures.

Section 7. [6-] Air Ambulance Equipment and Supplies [Communication]. (1) Air ambulance equipment and supplies shall be maintained according to recommendations of the manufacturer.

(2) Equipment shall be functional at all altitudes and shall not interfere with aircraft avionics. Conversely, avionics shall not interfere with medical equipment operations.

(3) The following BLS equipment and supplies shall be required on fixed and rotor wing air ambulance aircraft:

(a) Fixed and portable suction apparatus including:

1. Hand operated mask ventilation units in adult, child, and infant sizes capable of use with oxygen; and

2. Oral-pharyngeal airways in adult, child, and infant sizes;

(b) Adult, obese adult, child, and infant sphygmomanometer cuffs.

A permanently mounted sphygmomanometer shall not satisfy this requirement;

(c) Adult and pediatric stethoscopes;

(d) Fixed and portable oxygen system to include:

1. Pressure gauge and flow rate regulator with a range from zero to fifteen (15) liters per minute;

2. Adapter and tubing;

3. Transparent oxygen mask in adult and children sizes;

4. Nasal cannulas in adult and children sizes;

(e) Bandages and tape;

(f) Two (2) sterile bulky absorbent dressings;

(g) Six (6) sterile gauze dressings four (4) inches by four (4) inches;

(h) Four (4) soft roller self-adhering bandages in various sizes;

(i) Four (4) rolls of adhesive tape in a least two (2) sizes;

(j) Two (2) triangular bandages with large safety pins;

(k) Two (2) sterile burn sheets;

(l) Splints and spinal immobilization devices which shall include:

1. One (1) lower extremity traction splint;

2. Securing straps;

3. One (1) short spineboard or other upper spinal immobilization or extrication device;

4. One (1) full body spinal immobilization device;

5. Rigid cervical collars with tracheal access in large, medium, and small adult and pediatric sizes;

(m) Safety equipment and supplies which shall include:

1. An ABC multipurpose fire extinguisher which meets the FAA requirements for each specific aircraft and configuration;

2. One (1) pocket mask with oxygen inlet and isolation valve;

3. One (1) set of personal protective clothing and devices per medical attendant;

4. Towelettes, solution or other similar supplies for cleansing of the hands;

5. Plastic bags for disposal of waste material;

6. Puncture resistant container for disposal of sharp objects; and

7. Two (2) full sets of clean and appropriate linen.

(n) An emesis container or similar substitute;

(o) Environment, terrain, and mission specific rescue and survival supplies.

(p) Stretcher or litter with:

1. Head raising capabilities;

2. An FAA approved aircraft specific mechanism for securing the stretcher or litter in the aircraft during transit; and

3. An FAA approved aircraft specific patient to stretcher securing mechanism. [An air ambulance provider shall provide emergency care equipment as required by 902 KAR 14:080, Section 6. The equipment shall be stored on board or in modular prepackaged form to be available for rapid loading and easy access aboard the aircraft at the time of response to a call.

(2) There shall be a means of securing the litter and attached patient.

(3)(a) The vehicle used by the provider shall have radio capability to communicate:

1. Ground to air;

2. Air to air; and

3. Air to ground.

(b) The radio capability shall include two (2) way radio communication equipment:

1. Compatible with the statewide ambulance to hospital emergency radio communications system; and

2. Capable of communicating with:

a. Ground personnel to properly coordinate the landing;

b. Physicians directing patient management; and

c. Primary medical responders on the ground who may be caring for the patient.

(4) If the air ambulance provider is operating as an advanced life support unit, the provider shall also:

(a) Meet the requirements of:

1. 201 KAR 9:161, Section 3(6); and

2. 201 KAR 9:171, Section 7;

(b) Store controlled drugs in a locked compartment or equivalent approved by the cabinet. An air ambulance provider which utilizes controlled substances shall have protocols approved by the Drug Control Branch of the cabinet.

(5) If the flight attendant referred to in Section 4(1)(a) of this administrative regulation is a registered nurse or physician, the flight attendant shall follow the protocols of the medical director relating to:

(a) Authorized procedures and drugs in addition to those referred to in subsection (4)(a)1 of this section; and

(b) Equipment and supplies in addition to those referred to in subsection (4)(a)2 of this section.

Section 8. ALS Air Ambulance Service Providers. (1) A rotor wing ALS air ambulance service shall meet the applicable requirements of Sections 1 through 7 of this administrative regulation. In addition, it shall also meet the following requirements:

(a) Evidence shall be on file to verify that the ALS written protocols have been reviewed by the appropriate agency;

(b) At the point of patient contact and transportation the air ambulance provider shall:

1. Carry and maintain in full operational order, the supplies and equipment as provided for in protocols established in paragraph (a) of this subsection, as required in 201 KAR 9:171, Section 7.

2. Stock and maintain minimal medications needed for resuscitation, advanced cardiac life support, and any other medications as provided for in:

a. Protocols established in accordance with paragraph (a) of this subsection; and

b. Local, state and federal statutes and regulations.

(2) Controlled drugs shall be stored in a locked compartment or

equivalent as approved by the cabinet.

(3) An air ambulance service which stores and utilizes controlled substances, shall have protocols approved by the cabinet's Drug Control Branch.

Section 9. Air Ambulance Services Communications. (1) An air ambulance service shall comply with FAR specifications for flight following and position plotting by a provider based or maintained communication center. The communication center shall be equipped with communications equipment and staffed by a properly trained ACS to receive and coordinate all calls as provided for by FAR. If providing fixed wing service, this requirement may be met by filing an FAA flight plan.

(2)(a) Rotor wing air ambulance service aircraft shall have radio capability to communicate:

1. Ground-to-air;
2. Air-to-air; and
3. Air-to-ground.

(b) Rotor wing aircraft radio capability shall include two (2) way radio communication equipment:

1. Compatible with the statewide ambulance to hospital emergency radio communication system; and
2. Capable of communicating with:
 - a. Ground personnel to properly coordinate the landing;
 - b. Physician medical director or medical control physician directing patient management; and
 - c. Primary medical responders on the ground who may be caring for the patient.

(3)(a) Fixed wing air ambulance service aircraft shall have radio capability to communicate:

1. Ground-to-air;
2. Air-to-air; and
3. Air-to-ground.

(b) Fixed wing aircraft radio capability shall include two (2) way radio communication equipment capable of communicating with ground personnel to properly coordinate the landing.

Section 10. [6-] Air Ambulance Records and Reports. (1) An air ambulance provider shall keep accurate records and reports concerning the transportation of an emergency patient which shall be maintained at the headquarters of the licensee and shall be available for periodic review as deemed necessary by the licensing agency.

(2) An [The] provider shall provide a full record to the receiving facility of any treatment administered at the pickup location or during transit. Required records and reports shall include:

(a) The "Kentucky Emergency Medical Service Ambulance Run Report", Form EHS-8A, incorporated by reference, or equivalent provider specific transport record acceptable to the licensing agency.

(3) Copies of completed run report forms shall be kept as required by KRS 216B.410(1) and guidelines established by the licensing agency in a manner of confidentiality and safekeeping for a minimum of five (5) years from the date on which the service was rendered, or in the case of a minor, until five (5) years after the minor reaches eighteen (18) years of age.

(4) The third copy of the run form, or electronic equivalent, shall be forwarded to the cabinet within thirty (30) days following the end of the month in which the run occurred.

(5) Personnel files on each attendant shall be maintained for:

(a) Five (5) years, or longer if specified in local government archives approved schedules, following termination or retirement from employment; or

(b) Five (5) years following the demise of the employee.

(6) Individual attendant personnel files shall contain:

- (a) A resume of an employee's training and experience; and
- (b) Current credentials including proof of CPR certification, or EMT or paramedic certification with corresponding numbers and expiration dates, or nursing or physician license;

(c) A preemployment criminal records check for each medical attendant added to the service after the effective date of this administrative regulation;

(d) Health records to include:

1. Written evidence of a preemployment health assessment having been conducted by a physician or a licensed advanced registered nurse practitioner (ARNP) stating the employee is capable of performing assigned job duties; and

2. Health records which meet the requirements of KRS 216B.410(3).

(7) An air ambulance provider shall maintain and follow written administrative, personnel, medical, and other operational policies and procedures that are reviewed on an annual basis by the air ambulance provider in order to assess their effectiveness. The policies and procedures shall be developed to include the following areas:

(a) Organizational structure, staffing, and allocation of responsibility and accountability;

(b) Mutual aid agreements and agreements with other ambulance providers;

(c) Personnel performance guidelines; and

(d) A plan to assure that a continuing education program shall be provided for its staff. The program shall include:

1. Evidence of continuing education for staff regarding acquired immune deficiency syndrome (AIDS) and infection control, including the handling of infectious waste in accordance with Centers for Disease Control guidelines;

2. A plan for response to, and the protection and decontamination of, the patient, aircraft, equipment, and staff if called upon to transport a patient exposed to hazardous chemicals;

3. A plan for assessing all other staff continuing education needs, with a coordinated development of methods to meet those needs; and

4. The maintenance of training rosters or other written records to support continuing education conducted by, or at the request of, the licensee.

(e) A plan for the quality assessment of patient care including a periodic review of run report forms, and evaluation of staff performance related to patient care;

(f) Policies and procedures concerning:

1. Aircraft maintenance;

2. Standard operating procedures (SOPS);

3. Patient protocols;

4. Transport response and limitations; and

5. Patient destination. [The record shall be completed and forwarded to the Cabinet for Human Resources in accordance with submission dates established by the cabinet; and

(b) Employee records which contain:

1. A resume of employee training and experience; and

2. Evidence of current certification.]

Section 11. [7-] Material Incorporated by Reference. The following material is incorporated by reference and may be inspected, obtained, or copied at the Office of the Commissioner, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. to 4:30 p.m., Monday through Friday.

(1) 1995, United States Department of Transportation Federal Aviation Regulations and Airman's Information Manual, Parts 43, 91, and 135.

(2) 1995, United States Department of Transportation Advisory Circulars No. 135-14A, Emergency Medical Services: Helicopters (EMS:H).

(3) Form EHS-8A, "Kentucky Emergency Medical Service Ambulance Run Report," (2/91) [is incorporated by reference and may be inspected, obtained, or copied at the Office of the Commissioner, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. to 4:30 p.m., Monday through Friday].

RICE C. LEACH, Commissioner

ADMINISTRATIVE REGISTER - 1045

JOHN MORSE, Secretary

APPROVED BY AGENCY: July 8, 1996

FILED WITH LRC: July 12, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1996 at 9 a.m. at the Health Services Auditorium, 1st Floor, CHS Building. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1996 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing will be canceled. This hearing is open to the public. Any person who attends will be given the 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, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing or written comments on the proposed administrative regulation to: William K. Moore, Jr., Acting General Counsel, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, Telephone: (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Contact person: Robert Calhoun

(1) Type and number of entities affected: Approximately thirteen (13) licensed air ambulance providers.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. No comments were received at the Notice of Intent Hearing relative to the cost of living and employment. This administrative regulation will have no effect on the cost of living or employment in the state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No comments were received at the Notice of Intent Hearing relative to the cost of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation:

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be no additional costs or savings within the cabinet.

2. Continuing costs or savings: As above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements required in this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues attributable to the requirements of this administrative regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation will continue existing licensing fees for air ambulance providers. This fee income and general funds will be utilized for implementation of this administrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will not have any additional economic impact on providers or the public.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives

were rejected: This administrative regulation complies with the specific legislative requirements of House Bill 492, as passed in the 1996 General Assembly, which requires the cabinet to promulgate administrative regulations to address specific requirements for the licensing of air ambulance providers. No alternatives were considered.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: When fully implemented, this administrative regulation will have a beneficial effect on the public's health by setting minimum standards for advanced life support and basic life support air ambulance providers.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Yes

(c) If detrimental result would result, explain detrimental effect: There would be no minimum standards which air ambulance providers would have to meet.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity or proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: The purpose of this emergency regulation is to comply with HB 492 passed by the 1996 General Assembly.

(11) TIERING: Is tiering applied? Yes. Tiering is applied because this administrative regulations addresses two types of basic and advanced life support air ambulance services, fixed and rotary.

CABINET FOR HEALTH SERVICES Department for Mental Health and Mental Retardation Services (Amendment)

908 KAR 1:300. Chemical dependency program evaluation.

RELATES TO: KRS Chapter 222.460 to 222.475

STATUTORY AUTHORITY: KRS 194.050, 222.460 to 222.475

NECESSITY, FUNCTION AND CONFORMITY: KRS 194.050 and 222.460 to 222.475 authorizes [empowers] the cabinet to promulgate administrative regulations [prescribe rules] governing the gathering of information on clients discharged from publicly funded chemical dependency treatment agencies [programs] and the format of reports of this [such] information to the cabinet in order to assess treatment effectiveness. EO 96-862, effective 7/2/96, reorganizes the Cabinet for Human Resources and places the Department for Mental Health and Mental Retardation Services and its programs under the Cabinet for Health Services.

Section 1. Definitions. (1) "Agency [Program]" is defined in KRS 222.005(2) [means a substance abuse or chemical dependency treatment program, licensed under KRS Chapters 210, 216B and 222] and receiving state or federal funds.

(2) "Client" means an individual on whom a record or chart has been opened by an agency [program] (or subcontractor of an agency [program]) and for whom a treatment plan has been prepared for a primary substance abuse problem. Clients receiving only DUI education services, DUI assessment services or Clients receiving only detoxification services during the treatment episode are excluded from the definition.

(3) " ~~[(6)] "Minimum data set~~ Client identifier" means a unique code [and nonintelligent number] used by agencies [programs] and the department to identify clients in a departmental data set.

(4) "Commissioner" means the Commissioner of the Department for Mental Health and Mental Retardation Services, or his designee.

(5) ~~[(3)]~~ "Department" means the Department for Mental Health and Mental Retardation Services within the Cabinet for Human

ADMINISTRATIVE REGISTER - 1046

Resources.

(6) "Discharge" means a date which is ninety (90) days following the last date on which a client received a treatment service from the agency.

(7) [(4)] "Division" means the Division of Substance Abuse within the Department for Mental Health and Mental Retardation Services.

(8) "Evaluator" means the independent organization determined by the department to be qualified to conduct an outcome study.

(9) "Instrument" means the electronically-recorded baseline survey tool adopted for use in the study.

(10) "Outcome [(5) - "Follow-up] study" means a department defined study [survey] of clients to assess their progress twelve (12) months after discharge from substance abuse treatment.

Section 2. Agency Responsibilities. (1) An agency shall explain the purpose, design, and procedures of the outcome study to the client.

(2) An agency shall ask the client to participate in the outcome study. An agency shall obtain informed consent from the client who agrees to participate. An agency shall allow the client the right to refuse to participate without risk of penalty or effect in the delivery of treatment services.

(3) An agency shall use the instrument required by the department to gather client information upon admission to treatment in an agency. The instrument shall be administered to the client within seventy-two (72) hours of admission to a residential or transitional care program, or within three (3) visits to outpatient or intensive outpatient care program.

(4) An agency shall:

(a) Report by the tenth of each month admission information gathered using the instrument to the evaluator using a specified electronic data format; and

(b) Gather and report informed consent, assent, and parental consent forms to the evaluator by the tenth of the month following the month of discharge.

(5) An agency shall designate a coordinator for the study and shall notify the division and the evaluator in writing of the name of the designated coordinator. [Survey Procedures. (1) Each client discharged from treatment since July 13, 1990 shall be contacted by the discharge program for an assessment of progress after treatment.

(2) Each program shall decide whether to contact clients first by mail or by telephone.

(a) Mail survey. If the method chosen for first contact is a mail survey, each client shall be mailed a return postage guaranteed postcard or a letter questionnaire from the discharging program within thirty (30) days of the twelve (12) month anniversary after discharge.

(b) If the client does not respond to the mailed questionnaire within thirty (30) days of the mailing, the program shall make up to three (3) attempts within a three (3) week period to contact the client by telephone for completion of the survey.

(c) Telephone survey. If the method chosen for first contact is a telephone survey, the program shall follow the telephone procedures in paragraph (b) of this subsection.

(d) If no contact can be made because of incorrect or missing address or phone number, the client can be deleted from the contact list and noted as "unable to contact" on the report to the department.

(3) Telephone interviewers shall observe all state and federal confidentiality regulations when attempting to contact clients. Interviewers shall ask to speak to the client or ask for a means of contacting the client. Interviewers shall not reveal the nature of the call or the treatment program identity to anyone other than the client without specific written consent.]

Section 3. Evaluator Responsibilities. (1) The evaluator shall receive and process the outcome study data generated by each agency.

(2) The evaluator shall monitor compliance with the reporting

requirements and advise the agency and the division when corrective action is necessary.

(3) The evaluator shall provide all necessary training of agency and department staff in regards to the outcome study and its administration.

(4) The evaluator shall provide ongoing technical assistance to the agency and the division in regards to the outcome study and its administration.

(5) The evaluator shall provide reports to the division on a quarterly basis of summaries of admission and discharge information gathered from the agencies. The evaluator shall also respond to specific data analysis requests by the division.

(6) The evaluator shall provide the division with copies of data files containing the collected admission and discharge information.

(7) The evaluator shall produce and provide to the division an annual report on the outcome study which includes the elements required by KRS 222.475.

(8) The evaluator shall provide security for all paper and electronic records which it holds in order to prevent unauthorized access to confidential client information.

(9) All paper and electronic records remain the property of the division and shall be maintained by the evaluator until disposal is directed by the division.

(10) The evaluator shall be responsible for any necessary revision of forms, software design, protocols, and procedures which govern the outcome study and its implementation.

(11) The evaluator shall contact a statistically valid representative sample of clients for each agency following the client's discharge from substance abuse treatment.

(a) The follow-up contact shall be one (1) year from the date of discharge.

(b) The methods of contact may include telephone, mail, and face to face interview.

(c) Each selected client shall be asked to answer a series of standard questions on a survey instrument designed to measure certain treatment outcomes. [Compliance. (1) Programs shall keep a record of all attempted contacts for each client for whom follow-up contact is attempted.

(a) The record shall include client's name, minimum data set client identifier, date, time, method, results of the attempt to contact, and the name of the staff person making the contact.

(b) The record shall be kept on file by the program and made available to departmental staff that shall monitor compliance with the statutes and regulations.

(2) Program compliance shall be determined by site visits and program audits.

(3) If a program is determined to be noncompliant, their federal and state substance abuse funds shall be held in escrow until such time as an acceptable reason for noncompliance is received or the program is in compliance. Escrow decisions shall be reached with the input of division staff and shall be approved by the department commissioner.]

Section 4. Confidentiality. The evaluator and the agency shall follow the standards protecting and guiding confidentiality of client identifiable information as found in 908 KAR 1:320. Confidential record of treatment for federally assisted alcohol and other drug abuse programs. [Reporting. (1) Responses shall be reported to the department using the client identifier from the minimum data set and submitted in a department specified format.

(2) Responses shall be reported to the department quarterly.

(a) Reports shall be due each October 31, January 31, April 30 and July 31.

(b) The first report shall be due January 31, 1992.

(3) Following the receipt of each program's reports, the division shall compile the data received and prepare an annual report to the Governor indicating the results by specific program, as well as a

~~statewide comparison.~~

~~(a) The survey data shall be linked to the minimum data set, where possible, for analysis and reporting.~~

~~(b) Draft copies of all reports shall be sent to the programs prior to their release as departmental reports.~~

~~(c) Program review and comment on reports shall be welcomed by the department.~~

~~(4) Division staff shall be available to provide training and technical assistance regarding the follow-up study requirements.]~~

Section 5. Monitoring and Penalties for Noncompliance. (1) The division shall monitor compliance of the evaluator and the agency.

(2) If an agency is determined to be noncompliant with any of the provisions of the administrative regulation, its state substance abuse payments, if any, shall be held by the department as provided in KRS 222.470 until the agency has met the requirements.

(3) A determination to hold payment shall be made by the commissioner.

(4) A notice of the determination shall be sent to the agency thirty (30) days prior to its implementation.

(5) Notice of determination. A notice of determination shall be in writing, mailed to the agency, and contain the following information:

(a) The reason for the determination;

(b) The effective date of the determination; and

(c) The agency's hearing rights in accordance with Section 6 of this administrative regulation. ~~[Costs. All costs incurred in conducting the follow-up study shall be the responsibility of the program.]~~

Section 6. Appeal of Penalties for Noncompliance. (1) An agency may appeal any determination made by the department in the application of the provisions of Section 5(2) and (3) of this administrative regulation.

(2) A written notice of appeal shall be submitted to the commissioner no later than thirty (30) days after an agency has been notified of a determination affecting payment. The notice of appeal shall:

(a) Specify the determination being appealed;

(b) Specify the reasons the agency believes the determination is unwarranted;

(c) Include any documentation the agency considers relevant to support the appeal; and

(d) Specify an alternative determination that should be made.

(3) The commissioner shall cause the appeal to be reviewed and evaluated with consideration of the provisions of applicable laws and regulations.

(4) The commissioner shall issue a written decision including findings of fact and conclusions on the appeal no later than thirty (30) days after receipt of a notice of appeal unless the commissioner determines that a conference may result in a mutually satisfactory resolution of the appeal.

(5) If the commissioner determines that a conference shall be held, the commissioner shall schedule a conference no later than thirty (30) days after receipt of a notice of appeal or at a later time agreeable to the commissioner and the agency.

(6) The conference shall be conducted according to the following procedures:

(a) The commissioner shall preside over the conference.

(b) The conference shall be recorded and a transcription made.

(c) The agency, or his authorized representative may present any oral arguments or documentation which he considers relevant to support the contention that the department should not take the appealed action or should rescind an action already taken.

(d) Department staff who are knowledgeable of applicable laws and regulations shall explain the department's determination and may present any documentation which supports the department's determination or which demonstrates if the department's determination and actions are consistent with applicable laws and administrative regulations.

(e) If the appealed determination is based upon reports provided by persons other than department employees, those individuals may attend the conference, explain the reports and the basis of those reports.

(f) The commissioner may question any of the participants and may permit any questions or discussion among participants if that will contribute to a decision on the appeal consistent with applicable laws and regulations.

(7) If an agency conference is held the commissioner shall issue a written decision on the appeal no later than thirty (30) days after the agency conference. The written decision shall include findings of fact and conclusions.

(8) If an agency disagrees with the commissioner's decision on an appeal he shall have the right to an administrative hearing.

(9) The agency may appeal the decision (and underlying program issue) by submitting a request for an administrative hearing to the commissioner within thirty (30) days after receipt of the decision.

(10) The commissioner shall forward the request to the Office of Personnel and Budget, Administrative Hearing Branch within five (5) working days of receipt.

(11) The scope of the administrative hearing shall be restricted to the issues raised pursuant to this administrative regulation.

(12) The administrative hearing shall be in accordance with KRS Chapter 13B.

Section 7. Material Incorporated by Reference. (1) The following forms from the University of Kentucky Center for Drug and Alcohol Research are hereby incorporated by reference:

(a) Baseline Survey Instrument (Electronic Format) (March 15, 1996 edition);

(b) Baseline Survey Instrument (Optical Scan Format) (March 15, 1996 edition);

(c) Consent to Participate in a Treatment Outcome Study (April 18, 1996 edition);

(d) Parental Consent for a Minor to Participate in a Treatment Outcome Study (April 18, 1996 edition);

(e) Assent to Participate in a Treatment Outcome Study (April 18, 1996 edition); and

(f) Follow-Up Contact Survey Instrument (Telephone Script) (March 15, 1996 edition).

(2) Copies of the incorporated material may be inspected, copied or obtained at the Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, 100 Fair Oaks Lane, Leestown Square, 4th Floor, Frankfort, Kentucky 40601, 8 a.m. through 4:30 p.m., Monday through Friday.

ELIZABETH REHM WACHTEL, Ph.D., Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: July 10, 1996

FILED WITH LRC: July 15, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for Wednesday, August 21, 1996 at 9 a.m. in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. This hearing will be canceled unless interested persons notify the following office in writing by Friday, August 16, 1996 of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Health Services, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Elizabeth Wachtel, Commissioner

(1) Type and number of entities affected: The regulation will affect all publicly-funded licensed chemical dependency agencies. Currently twenty (20) licensed entities are affected. If Medicaid coverage of alcohol and drug treatment becomes a reality, the number of agencies affected would increase dramatically, as the governing

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statute explicitly includes Medicaid funded entities.

(2) Direct and indirect costs or savings to those affected:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No hearing was requested as a result of the Notice of Intent being published and no comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No hearing was requested as a result of the Notice of Intent being published and no comments were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: The affected agencies will submit electronically recorded disks each month to the evaluator with baseline client data. They will also submit disks each month with discharge data. They will also submit copies of consent and assent forms signed by clients and parents. The evaluator shall contact representative clients by mail, telephone, and personal interview and shall collect treatment outcome data. The evaluator will periodically submit outcome reports to the Division of Substance Abuse and will prepare an annual report which the division shall report to the Governor. The cost to the affected agencies should be no net gain because they will no longer have staff, telephone and postage costs associated with contacting clients themselves.

2. Second and subsequent years: Same as the first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First Year: The Department has an existing contract with the University of Kentucky in the amount of \$200,000 to design and implement the outcome study, including responsibility for preparing the required reports.

2. Continuing cost or savings: Same as the first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Minimal

(4) Assessment of anticipated effect on state and local revenue: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Existing general and agency funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No hearing was requested as a result of the Notice of Intent being published and no comments were received.

(b) Kentucky: No hearing was requested as a result of the Notice of Intent being published and no comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Department has four years experience with the alternative of having the affected agencies collect and survey their clients themselves. This method has been rejected in favor of the proposed regulatory method in order to eliminate problems with noncomparability, reliability, and integrity of the outcome data. It can also be done more cost effectively by one contract with a qualified research organization.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? (Explain why tiering was or was not used) Tiering was not used since the application of regulation applies to all affected parties in a like manner.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Although the entities affected by this regulation receive federal monies from the Substance Abuse Prevention and Treatment Block Grant, there is no federal regulatory mandate to conduct the outcome study which this regulation governs. This regulation is only mandated by state statute.

2. State compliance standards. None

3. Minimum of uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? None

5. Justification for the imposition of stricter standard, or additional or different responsibilities of requirements. None

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, JULY 15, 1996

**COUNCIL ON HIGHER EDUCATION
(New Administrative Regulation)**

13 KAR 2:070. Administrative hearing procedures for determination of residency status.

RELATES TO: KRS 164.020, 13 KAR 2:045

STATUTORY AUTHORITY: KRS Chapter 13B, 164.020

NECESSITY AND FUNCTION: The Administrative Hearings Act, codified in KRS Chapter 13B, sets forth due process hearing requirements for Kentucky agencies engaged in regulatory activities which adjudicate the legal rights, duties, privileges, or immunities of persons. The Council on Higher Education is charged by statute with the responsibility for determining the residency status of students at public institutions for the purposes of admissions and tuition assessment. Implementation of that statute occurs through 13 KAR 2:045. This administrative regulation complies with the requirements of KRS Chapter 13B in establishing a due process administrative hearing process for appeals of administrative determinations of residency status.

Section 1. Definitions. The following terms shall have the following meanings as used in this section:

(1) "Administrative hearing" means a formal adjudicatory proceeding conducted by the agency on the record to adjudicate the legal rights, duties, privileges, or immunities of an individual or party at which each party is given the opportunity, after proper notice, to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence.

(2) "Administrative action" means the formal administrative adjudicatory proceeding before the agency from the filing of the petition until the time for all administrative appeals has run regarding the claims made in the petition.

(3) "The agency" means the Council on Higher Education.

(4) "Agency head" means the Executive Director of the Council on Higher Education in conformity with the definition in KRS 13B.010(4).

(5) "Docket coordinator" means the employee of the agency responsible for receiving and filing pleadings in administrative hearings.

(6) "Hearing officer" is defined in KRS 13B.010(7).

(7) "Institution" shall mean one (1) of the eight (8) public institutions of higher education or one (1) of the colleges that is part of the University of Kentucky Community College System as set forth in KRS Chapter 164 when used in conjunction with 13 KAR 2:045.

(8) "Notice" means the notice of hearing required by KRS 13B.050 as defined in these regulations.

(9) "Party" is defined in KRS 13B.010(3) and shall include the use of institution, agency, person, or student when used in conjunction with 13 KAR 2:045.

(10) "Petition for hearing" means any written request for an administrative hearing before the agency, filed by a student, which commences an appeal of a determination of residency status in accordance with the procedures set forth in this administrative regulation.

(11) "Pleading" means the petition, the answer, and any other responsive pleading ordered by a hearing officer or authorized by law or administrative regulation.

(12) "Record" is defined in KRS 13B.130.

Section 2. Right to Counsel and Attorney Representation. (1) Any person who appears before the agency in a formal administrative hearing shall have the right, at their own expense, to be represented

or advised by legal counsel.

(2) Any attorney representing a party before the agency must notify the agency, in writing, of such representation before practicing in that case before the agency.

(3) Any attorney representing a party before the agency shall file a written notice of entry of appearance. Upon the notice of entry of appearance attorneys shall give their and their client's current, complete, and correct name, address, phone number, and telefax number.

(4) The attorney shall promptly notify the agency of any change of address for himself or his client by filing a notice of change of address in the record.

Section 3. Assignment to Hearing Officer; Duties and Authority.

(1) The agency shall designate a hearing officer for a formal administrative action within ten (10) days of the filing of the petition of an appeal of a determination of residency status; or

(2) The agency shall request a designation of a hearing officer from the Division of Administrative Hearings in the Attorney General's Office under KRS 13B.030 in writing to the division within ten (10) days of the filing of the petition.

(3) The hearing officer shall have the authority to take any procedural action authorized by KRS Chapter 13B, or these regulations, including, but not limited to, the authority to:

- (a) Administer oaths and affirmations;
- (b) Issue subpoenas for witnesses and production of documents or things;
- (c) Regulate discovery;
- (d) Rule on procedural requests;
- (e) Hold prehearing conferences;
- (f) Regulate the course of and maintain order in the administrative hearing;
- (g) Rule on evidentiary matters and admit in or exclude evidence from the record;
- (h) Examine witnesses;
- (i) Require the parties to submit legal memoranda and proposed findings of fact and conclusions of law;
- (j) Make proposed findings of fact, conclusions of law, and recommended orders for the agency head; and,
- (k) Take any action consistent with law to promote the orderly and prompt conduct of the administrative action.

Section 4. Conflict of Interest; Disqualification. (1) KRS 13B.040(2)(a)(b) set forth the standards and conditions for withdrawal and disqualification of a hearing officer.

(2) Within ten (10) days of disqualification of a hearing officer, the agency head shall request or assign another hearing officer by written order.

Section 5. Ex Parte Contact Prohibited. (1) Unless otherwise allowed by KRS 13B.100, there shall be no ex parte contact between a hearing officer assigned to an administrative action, or any person working under the hearing officer's supervision, and any person with a direct or indirect interest in the outcome to that administrative action concerning the merits of the administrative action assigned to the hearing officer.

(2) This administrative regulation shall not prohibit ex parte contact with staff on procedural matters.

Section 6. Service. (1) Service may be made in the following manner unless otherwise directed by the hearing officer:

(a) By personal delivery of or by mailing a copy of the paper to the party served by regular mail; or

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(b) By certified mail.

(2) Whenever a party is represented by an attorney of record in the administrative action, service may be made upon the attorney.

Section 7. Filing of papers. (1) Papers may be filed with the agency by telefacsimile machine at the telefacsimile telephone number listed for the Agency. The filing date of a paper sent by facsimile shall be the date the agency receives the telefacsimile.

(2) All papers filed in an administrative action must be signed by the filing person or his authorized representative. The signature of the filing person or his authorized representative constitutes a certificate that the signing person has read the paper and that, to the best of his knowledge, information, and belief, it is not interposed for any improper purpose.

Section 8. Venue. Administrative hearings shall be conducted at a site designated by the agency.

Section 9. Waiver. Any person granted a procedural right under these administrative regulations or KRS Chapter 13B may voluntarily, knowingly, and expressly waive such a right on the record orally or in a signed writing.

Section 10. Petition for Hearing; Date for Hearing. (1) The petition for hearing shall be in writing in the format and form designated by the agency and shall contain a short and plain statement of the facts upon which the request is based, shall request a hearing and any other relief, shall be signed by the filing party, and shall comply with the provisions of 13 KAR 2:045 under which relief is sought. The petition for hearing shall indicate on its face the name and address of each party to be served by the agency. Any doubts about whether a document constitutes a petition for hearing shall be resolved in favor of the filing party.

(2) The administrative action shall commence upon the filing of the petition for hearing.

(3) The notice of hearing shall conform to KRS 13B.050.

(4) The agency shall file an answer to the petition within fifteen (15) days of the service of notice.

Section 11. Prehearing Conferences and Orders. (1) A hearing officer may hold a prehearing conference in any administrative action assigned to him to consider any matter.

(2) Prehearing conferences may be held by telephone upon agreement of all persons concerned.

(3) The hearing officer shall file a prehearing conference order in compliance with KRS 13B.070(2) after each prehearing conference which sets forth the date, place, and attendees of the prehearing conference and sets out any rulings made by the hearing officer at the prehearing conference.

Section 12. Discovery. (1) No fewer than five (5) days before the hearing and within thirty (30) days of service of the notice required under these regulations, the parties shall produce and serve on every other party the following information:

(a) The name, address, and telephone number of each witness whom the disclosing party expects to call at the hearing, with a designation of the subject matter of which each witness might be called to testify.

(b) The name and address of each person whom the party believes may have knowledge or information relevant to the events, transactions, or occurrences that gave rise to the proceeding and the nature of the knowledge or information each such individual is believed to possess.

(c) The name and address of each person who has given statements, whether written or recorded, signed or unsigned, regarding matters relevant to the petition, and the custodian of the copies of those statements.

(d) The existence, location, custodian, and general description of any tangible evidence or relevant documents that the disclosing party plans to use at the hearing.

(e) A list of the documents or, known by a party to exist, whether or not in the party's possession, custody or control and which that party believes may be relevant to the subject matter of the proceeding and the date(s) when those documents will be or have been made available for inspection and copying.

(2) The hearing officer may allow any party to use any form of discovery allowed in the Kentucky Rules of Civil Procedure.

(3) All matters produced under this section shall include information in the possession, custody, and control of the parties as well as that which can be ascertained, learned, or acquired by reasonable inquiry and investigation.

(4) The parties shall be under a continuing duty to produce information under this section, and each party shall make additional or amended disclosures whenever new or different information is discovered or revealed.

(5)(a) Unless a hearing officer orders otherwise, transcripts of depositions, interrogatories and responses thereto, requests for production, inspection or for admission and responses thereto shall not be filed in the record.

(b) The hearing officer shall determine what is to be included in the record.

(6) Upon the failure of any party to produce information under this section, another party may move for an order compelling production.

(7) If a party fails to comply with the prehearing discovery required by this section or an order of the hearing officer under this section, the hearing officer may impose sanctions.

Section 13. Subpoenas. (1) The hearing officer may issue subpoenas requiring the attendance and testimony of witnesses and the production of any tangible items in the possession or under the control of witnesses.

(2) A motion for issuance of a subpoena shall be in writing, filed with the agency at least five (5) days before the hearing. The motion shall set forth the need for the subpoena and shall specify the name and address of the person to be subpoenaed and the name, address, and phone number of the party requesting a subpoena. If the subpoena requests the production of tangible items, the motion shall describe those items with particularity.

Section 14. Default. If a party fails to timely comply with an order of a hearing officer or a requirement of these regulations or to appear at a hearing, the hearing officer shall file an order directing the noncomplying party to show cause why the hearing officer should not deem that party to have waived his right to an administrative hearing and why the hearing officer should not immediately recommend the agency head enter an order adverse to the party. If the noncomplying party does not satisfy the show cause order as required, the hearing officer may recommend that the agency head enter a final order in conformity with the relief requested by the opposing party in the administrative action.

Section 15. Burden of Proof. (1) The student shall have the burden of going forward to establish a case and shall bear the ultimate burden of persuasion consistent with requirements of 13 KAR 2:045.

(2) The ultimate burden of persuasion in all administrative actions shall be met by clear and convincing evidence in the record.

Section 16. Evidence. (1) The hearing officer shall admit evidence in the record in accordance with KRS 13B.090 and reasonable administrative practice.

(2) The hearing officer may on his own motion or motion of a party separate the witnesses while testimony is being offered and may limit cumulative testimony by any witness.

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(3) The hearing officer may admit documentary evidence in the record in the form of a copy or excerpt if the original document is not available. Any party to the proceeding shall have the right to compare the copy or excerpt with the original prior to the copy or excerpt being admitted in to the record.

Section 17. Recording proceedings; transcripts; exhibits. (1) All testimony, oral motions, objections, and rulings thereon in an administrative action shall be recorded verbatim stenographically, electromechanically, or by other means.

(2) Upon the filing of a signed agreed order, any administrative hearing may be conducted in whole or in part by telephone, television, or other electronic means in accordance with KRS 13B.080(7). If any part of a hearing is conducted by electronic means for which there is a charge, each party shall bear a pro rata portion of the cost of conducting the proceedings electronically, or shall bear such costs as the hearing officer deems just. Any part of a hearing conducted by electronic means shall be recorded stenographically or by electromechanical means or by other means.

(3) A hearing officer may, in his discretion, order a transcript be made of all or a portion of any recording of an administrative action assigned to that hearing officer. The agency shall bear the cost of a transcript ordered by the hearing officer.

(4) Following the close of the formal administrative hearing, the agency shall take custody of all exhibits introduced at the administrative hearing and shall retain those exhibits with the record for at least five (5) years.

Section 18. Posthearing Procedures; Exceptions; Jurisdiction. (1) At the conclusion of an administrative hearing, the hearing officer may, within his discretion, order the parties to submit posthearing memoranda or draft recommended orders for the agency head.

(2) As soon as practicable after the conclusion of the administrative hearing, the hearing officer shall file an order that memorializes the time, place, and duration of the hearing of the administrative action and recites appearances by counsel and parties. The hearing officer shall order at the close of the hearing whether the hearing will be transcribed, and shall set this forth in the posthearing order.

(3) Within five (5) days after the posthearing order is filed, or the transcript of the hearing is received by the agency if a hearing officer orders a transcript, the agency shall compile the official record, as defined in KRS 13B.130, and shall transmit a dated, certified copy of the record to the hearing officer. The hearing officer shall file a recommended order within thirty (30) days of receipt of the record.

(4) Any party filing exceptions to a hearing officer's recommended order as provided for in KRS 13B.110(4) shall file with their exceptions a draft final order for the agency Head. The excepting party's draft final order shall set out the relief the party requests in its exceptions. The party filing exceptions shall serve a copy on the hearing officer.

(5) The hearing officer shall retain jurisdiction over the administrative action until the time for filing exceptions under KRS 13B.110(4) has run. After that time, the administrative action shall be submitted to and within the sole jurisdiction of the agency head.

JAMES M. MILLER, Chair

APPROVED BY AGENCY: July 10, 1996

FILED WITH LRC: July 11, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on administrative regulation 13 KAR 2:070, Administrative hearing procedures for determination of residency status, will be held on August 30, 1996, at 10 a.m. at 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the Council on Higher Education in writing by August 25, 1996. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administra-

tive 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed amendment to the administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed amendment to the administration regulation to: Mr. Dennis L. Taulbee, Director of Staff Services/General Counsel, Council on Higher Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601, (502) 573-1555, FAX (502) 573-1535.

REGULATORY IMPACT ANALYSIS

Agency Contact: Dennis L. Taulbee, General Counsel

(1) There are eight public universities and fourteen community colleges affected by this administrative regulation. The administrative regulation relates to the conduct and procedures for an administrative hearing on a determination of residency status.

(2) Direct and indirect costs or savings on the:

(a) There are no direct or indirect costs or savings on the cost of living or employment in the geographical area in which the administrative regulation is to be implemented.

(b) There are no direct or indirect costs of doing business in the geographical area in which the administrative regulation is to be implemented.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs for the:

1. first year are limited. The universities will have to maintain records of student appeals which they currently do. The Council on Higher Education will maintain detailed files on individual appeals.

2. second and subsequent years. Same as # 1 above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The extension of a formal due process hearing to students appealing decisions of residency status requires the appointment of a hearing officer. The cost is estimated at \$300-500 per appeal. Based on the number of appeals occurring annually, the annual cost is estimated at \$3,000--5,000.

2. Continuing costs or savings: Same as (3)(a)1. above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Additional paperwork requirements center on the need to maintain formal records of the adjudicatory hearing. The agency considers the additional paperwork requirements to be minimal.

(4) Impact on state or local revenue. This administrative regulation has no measurable impact, direct or indirect on state revenue.

(5) Source of revenue. State general funds appropriated to CHE will be used to administer this regulation. A provision exists for CHE to charge institutions one-half of the cost of an administrative hearing.

(6) Economic impact on Kentucky.

(a) Geographical area. No impact.

(b) Kentucky. No impact.

(7) No alternative measures have been discussed. KRS Chapter 13B requires a full due process hearing.

(8) Assessment of expected benefits:

(a) Impact on public health and environmental welfare. Not applicable.

(b) Detrimental effect on environment and public health if not implemented. Not applicable.

(c) Explain detrimental effect if appropriate. Not applicable.

(9) Identify statute, administrative regulation or agency policy in conflict, overlapping or duplicative. None

(a) Necessity of administrative regulation if conflict is present. Not applicable.

(b) If in conflict was effort made to harmonize? Not applicable.

(10) Additional information or comments. None

(11) Is tiering being applied? No. Not applicable.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET**
Department for Environmental Protection
Division of Waste Management
(New Administrative Regulation)

401 KAR 30:005. Definitions Related to 401 KAR Chapter 30.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.50, 224.60, 224.99, 40 CFR 260.10, 401 KAR Chapter 30

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 and the waste management provisions of KRS Chapter 224 require the cabinet to adopt administrative regulations for the management of solid, special, and hazardous wastes. This chapter establishes the general administrative procedures that are applicable to 401 KAR Chapter 30. This administrative regulation defines essential terms, acronyms, and abbreviations used in connection with this chapter.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or otherwise specifically indicated by context, terms in 401 KAR Chapter 30 shall have the meanings given in this section.

(1) "100-year flood" means a flood that has a one (1) percent chance of being equaled or exceeded in any given year.

(2) "Application" means the form approved by the cabinet for applying for a permit, including any additions, revisions or modifications and any narrative and drawings required by 401 KAR Chapters 30 to 48. The term includes: Part A of the application (Part A); Part B of the application (Part B); notice of intent; administrative application; special waste application; or technical application.

(3) "Cabinet" shall have the meaning specified in KRS 224.01-010.

(4) "Coal mining waste" means earth materials which are combustible, physically unstable, or acid-forming or toxic-forming, that are generated during and incidental to the mining and extraction of coal and to the washing and crushing of coal. The term does not include used oil, paints or flammable liquids. The term includes the following:

(a) Refuse which is that waste material in the raw coal which it is the object of cleaning to remove;

(b) Overburden which includes all of the earth and other geologic materials, excluding topsoil, which lie above a natural deposit of coal and also means such earth and other material after removal from their natural state in the process of mining; and

(c) Coal mining by-products which include any material that is not one (1) of the primary products of a particular coal mining operation, is a secondary and incidental product of the particular operation and would not be solely and separately mined by the particular operation. The term does not include an intermediate mining product which results from one (1) of the steps in a mining process and is processed through the next step of the process within a short time. An example of a coal mining by-product is that part of the ore deposit that is too low in grade to be of economic value at the time, but which is stored separately in the hope that it can be profitably treated later.

(5) "Contaminate" means introduce a substance that would cause:

(a) The concentration of that substance in the groundwater to exceed the maximum contaminant level specified in 401 KAR 30:031, Sections 5 and 6 of 401 KAR 47:030, or Section 8 of 401 KAR 34:060;

(b) An increase in the concentration of that substance in the groundwater where the existing concentration of that substance exceeds the maximum contaminant level specified in 401 KAR 30:031, 401 KAR 47:030, or Section 8 of 401 KAR 34:060; or

(c) A significant increase above established background levels,

for substances that do not have an established maximum contamination level.

(6) "Contamination" means the degradation of naturally occurring water, air, or soil quality either directly or indirectly as a result of human activities.

(7) "Destruction or adverse modification" means an alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

(8) "Disposal" shall have the meaning specified in KRS 224.01-010.

(9) "Endangered or threatened species" means any species listed as such pursuant to Section 4 of the Endangered Species Act, as amended, 16 USC 1536.

(10) "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation, and the United States Government Printing Office.

(11) "Food chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(12) "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table, and perched water zones below the B-soil horizon, including water circulating through fractures, bedding planes, and solution conduits.

(13) "Hazardous waste" shall have the meaning specified in KRS 224.01-010.

(14) "Hydric soils" means soils that, in their undrained condition, are saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

(15) "Hydrophytic vegetation" means a plant growing either in water, or in a substrate that is at least periodically deficient of oxygen during a growing season as a result of excessive water content.

(16) "Karst terrain" means a type of topography where limestone, dolomite or gypsum is present and is characterized by naturally occurring closed topographic depressions or sinkholes, caves, disrupted surface drainage, and well developed underground solution channels formed by dissolution of these rocks by water moving underground.

(17) "Lower explosive limit" means the lowest percent by volume of a mixture of explosive gases which will propagate a flame in air at twenty-five (25) degrees Celsius and atmospheric pressure.

(18) "Open burning" means the combustion of any material or solid waste without:

(a) Control of combustion air to maintain adequate temperature for efficient combustion;

(b) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(c) Control of emission of the gaseous combustion products.

(19) "Operator" means any person responsible for overall operation of an on-site or off-site waste facility, including any private contractor conducting operational activities at a federal facility.

(20) "Owner" means any person who owns an on-site or off-site waste facility, or any part of a facility.

(21) "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management administrative regulations. The term permit includes permit-by-rule, registered permit-by-rule, research, development, and demonstration permit, and emergency permit. However, the term permit does not include draft permit or proposed permit.

(22) "Person" shall have the meaning specified in KRS 224.01-010.

(23) "Point source" means any discernible, confined, and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock,

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concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(24) "Recycling" shall have the meaning specified in KRS 224.01-010.

(25) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.

(26) "Solid waste" shall have the same meaning as KRS 224.01-010.

(27) "State" means any of the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands or Guam but does not include any foreign country.

(28) "Storage" shall have the meaning specified in KRS 224.01-010.

(29) "Termination" shall have the meaning specified in KRS 224.01-010.

(30) "Transportation" shall have the meaning specified in KRS 224.01-010.

(31) "Washout" means the carrying away of waste by waters as a result of flooding.

(32) "Waste" shall have the meaning specified in KRS 224.01-010.

(33) "Water" or "waters of the Commonwealth" shall have the meaning specified in KRS 224.01-010.

(34) "Well" means any shaft or pit dug or bored into the earth, generally of cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(35) "Wetlands" means land that has a predominance of hydric soils and is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by context, acronyms and abbreviations used in 401 KAR Chapter 30 shall have the meaning as identified in Table 1 of this administrative regulation.

Table 1. Acronyms and Abbreviations.

CFR	Code of Federal Regulations
KAR	Kentucky Administrative Regulation
KRS	Kentucky Revised Statute
PCB	Polychlorinated biphenyl
UICP	Underground Injection Control Program
USC	United States Code
U.S. EPA	United States Environmental Protection Agency

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a

request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: This regulation does not affect any entities, because it only defines terms used in this chapter. The regulation was promulgated to comply with KRS 13A.222.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The cabinet will experience no additional costs or savings by promulgating the amendments to this regulation.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: There will be no additional factors affecting costs.

b. Reporting and paperwork requirements: There will be no extra paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on the state and local revenue with the promulgation of this regulation.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No costs are imposed with the promulgation of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

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b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: There were no other alternatives that would achieve compliance with KRS 13A.222.

8. Assessment of expected benefits of the administrative regulation: The benefit is having the definitions clearly stated at the beginning of each chapter.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Not applicable since no requirements are imposed.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Tiering is applied to all of Kentucky's waste regulations, based on type and quantity of waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments establish definitions of waste terms and the clarification of certain definitions. This regulation is necessary to maintain consistency between state and federal programs. In addition, the regulation has been modified to reflect regulation construction specified in KRS 13A.222.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that manages hazardous waste.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. This administrative regulation establishes definitions for all terms within 401 KAR Chapter 30. These

terms are assimilated from existing federal regulatory definitions and existing statutory definitions where applicable.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): Because this administrative regulation only establishes definitions for 401 KAR Chapter 30, this administrative regulation will not affect state, county, or local expenditures.

Other Explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (New Administrative Regulation)

401 KAR 31:005. Definitions related to 401 KAR Chapter 31.

RELATES TO: KRS 224.01, 224.10, 224.46, 40 CFR 260.10, 261.1, 401 KAR Chapter 31

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: This chapter implements provisions of KRS 224.46-510 and establishes the general provisions applicable to generators of hazardous waste. This administrative regulation defines essential terms that are used in this chapter.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or otherwise specifically indicated by context, terms in 401 KAR Chapter 31 shall have the meanings given in this Section.

(1) "100-year floodplain" means any land area which is subject to a one (1) percent or greater chance of flooding in any given year from any source.

(2) "100-year flood" means a flood that has a one (1) percent chance of being equaled or exceeded in any given year.

(3) "Aboveground tank" means a device meeting the definition of "tank" and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

(4) "Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

(5) "Accumulated speculatively" means that a material is accumulated before being recycled.

(a) A material is not accumulated speculatively, if the person accumulating it can show:

1. That the material is potentially recyclable and has a feasible means of being recycled; and

2. That - during the calendar year (commencing on January 1) - the amount of material that is recycled, or transferred to a different site for recycling, equals at least seventy-five (75) percent by weight or volume of the amount of that material accumulated at the beginning of the calendar year (including any material accumulated from previous years).

(b) In calculating the percentage of turnover, the seventy-five (75) percent requirement is to be applied to each material of the same type that is recycled in the same way. Materials accumulating in units that would be exempt from administrative regulation under Section 4(3) of 401 KAR 31:010 are not to be included in making the calculation. (Materials that are already defined as wastes also are not to be included in making the calculation.) Materials are no longer in

this category once they are removed from accumulation for recycling.

(6) "Active fault" means a land area which, according to the weight of geological evidence, has a reasonable probability of being affected by movement along a fault to the extent that a waste site or facility would be damaged and thereby pose a threat to human health and the environment.

(7) "Active life" of a facility means the period from the initial receipt of waste at a waste site or facility until the cabinet receives certification of final closure.

(8) "Active portion" means any area of a facility where treatment, storage, or disposal operations are being or have been conducted and which have not been closed. It includes the treated area of a landfarm and the active face of a landfill. Covered, closed, or inactive portions of landfills, building roofs, and roads are excluded unless designated as "active portions" by the cabinet.

(9) "Admixed liner" means a liner made from a mixture of any of a multitude of materials, often asphalt or cement, with widely varying physical and chemical properties. Admixed liners shall be demonstrated to be structurally sound and chemically resistant to the waste placed in it so as to be capable of supporting the waste without cracking or disintegrating or allowing waste or leachate to escape.

(10) "Agricultural waste" means any nonhazardous waste resulting from the production and processing of on-the-farm agricultural products, including manures, prunings and crop residues.

(11) "Air stripping operation" is a desorption operation employed to transfer one (1) or more volatile components from a liquid mixture into a gas (air) either with or without the application of heat to the liquid. Packed towers, spray towers, and bubble-cap, sieve, or valve-type plate towers are among the process configurations used for contacting the air and a liquid.

(12) "Ampule" means a small sealed glass container for one (1) dose of sterile medicine.

(13) "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to hazardous waste management units including tanks between hazardous waste storage and treatment tanks to a point of disposal on site, or to a point of shipment for disposal off site.

(14) "Application" means the form approved by the cabinet for applying for a permit, including any additions, revisions or modifications and any narrative and drawings required by 401 KAR Chapters 30 to 48. The term includes: Part A of the application (Part A); Part B of the application (Part B); notice of intent; administration application; special waste application; or technical application.

(15) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(16) "As received waste" refers to the waste as received in the shipment from the generator or sample collector.

(17) "Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

(18) "Attenuation" means any decrease in the maximum concentration or total quantity of an applied chemical or biological constituent in a fixed time or distance traveled resulting from a physical, chemical, or biological reaction or transformation occurring in the zone of aeration or zone of saturation.

(19) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit or part of a facility, such as the plant manager, superintendent, or person of equivalent responsibility.

(20) "Average volatile organic concentration" or "average VO concentration" means the mass-weighted average volatile organic concentration of a hazardous waste as determined in accordance with the requirements of Section 4 of 401 KAR 35:281.

(21) "Base flood" means a flood that has a one (1) percent or greater chance of recurring in any year, or a flood of a magnitude

equaled or exceeded once in 100 years on the average over a significantly long period.

(22) "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

(23) "Board" shall have the meaning specified in KRS 224.46-810.

(24) "Bodily injury" shall have the meaning given by applicable Kentucky statutes. Bodily injury does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for bodily injury.

(25) "Boiler" means an enclosed device using control flame combustion and having the following characteristics:

(a)1. The unit shall have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

2. The unit's combustion chamber and primary energy recovery section(s) shall be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section (such as water walls and superheaters) shall be physically formed into one (1) manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream) and fluidized bed combustion units; and

3. While in operation, the unit shall maintain a thermal energy recovery efficiency of at least sixty (60) percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

4. The unit shall export and utilize at least seventy-five (75) percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(b) The unit is one (1) which the cabinet has determined, on a case-by-case basis, to be a boiler, after considering the standards in 401 KAR 30:080.

(26) "Bottoms receiver" means a container or tank used to receive and collect heavier bottoms fractions of the distillation feed stream that remain in the liquid phase.

(27) "Burn" means burning for energy recovery or destruction, or processing for materials recovery or as an ingredient.

(28) "By-product" is a material that is not one (1) of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a coproduct that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

(29) "Cabinet" shall have the meaning specified in KRS 224.01-010.

(30) "Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

(31) "Cation exchange capacity" means the sum of exchangeable cations a soil can absorb expressed in milliequivalents per 100 grams of soil as determined by sampling the soil to the depth of cultivation or solid waste placement, whichever is greater, and analyzing by the summation method for distinctly acid soils or the sodium acetate

method for neutral, calcareous, or saline soils.

(32) "Certificate" shall have the meaning specified in KRS 224.46-810.

(33) "Certification" means a statement of professional opinion based upon knowledge and belief.

(34) "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements.

(35) "Closed-vent system" means a system that is not open to the atmosphere and that is composed of piping, connections, and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device.

(36) "Closure plan" means the plan for closure prepared in accordance with the requirements of Section 3 of 401 KAR 34:070 or Section 3 of 401 KAR 35:070.

(37) "Closure" shall have the meaning specified in KRS 224.01-010.

(38) "Component" means either the tank or ancillary equipment of a tank system.

(39) "Condenser" means a heat-transfer device that reduces a thermodynamic fluid from its vapor phase to its liquid phase.

(40) "Conditionally exempt small quantity generator" means:

(a) A generator who generates no more than 100 kilograms of hazardous waste in a calendar month; and

(b) A generator who generates acutely hazardous waste listed in Sections 2, 3, and 4(5) of 401 KAR 31:040 in a calendar month in quantities greater than one (1) kilogram. All quantities of that acutely hazardous waste are subject to administrative regulation under 401 KAR Chapters 32 through 39, and the notification and permitting requirements of KRS 224.01-400, 224.40-310, 224.46-510, 224.46-580, and 224.50-130 to 224.50-413.

(41) "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(42) "Connector" means flanged, screwed, welded, or other joined fitting used to connect two (2) pipelines or a pipeline and a piece of equipment. For the purposes of reporting and recordkeeping, connector means flanged fittings that are not covered by insulation or other materials that prevent location of the fittings.

(43) "Consignee" means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste is sent.

(44) "Constituent" shall have the same meaning as "hazardous waste constituent."

(45) "Container" means any portable device in which hazardous waste is transported, stored, treated, or otherwise handled, and includes transport vehicles that are containers themselves (for example, tank trucks, tanker-trailers, and rail tank cars), and containers placed on or in a transport vehicle.

(46) "Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of 401 KAR 34:245 or 35:245.

(47) "Contaminate" means introduce a substance that would cause:

(a) The concentration of that substance in the groundwater to exceed the maximum contaminant level specified in 401 KAR 30:031, Sections 5 and 6 of 401 KAR 47:030, or Section 8 of 401 KAR 34:060;

(b) An increase in the concentration of that substance in the groundwater where the existing concentration of that substance exceeds the maximum contaminant level specified in 401 KAR 30:031, 401 KAR 47:030, or Section 8 of 401 KAR 34:060; or

(c) A significant increase above established background levels, for substances that do not have an established maximum contamination level.

(48) "Contamination" means the degradation of naturally occurring

water, air, or soil quality either directly or indirectly as a result of human activities.

(49) "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in the event of a fire, explosion, or release of waste or waste constituents into the environment which has the potential for endangering human health and the environment. Financial planning to identify resources for initiation of such action is a part of contingency plan development.

(50) "Continuous recorder" means a data recording device recording an instantaneous data value at least once every 15 minutes.

(51) "Control device shutdown" means the cessation of operation of a control device for any purpose.

(52) "Control device" means an enclosed combustion device, vapor recovery system, or flare. Any device the primary function of which is the recovery or capture of solvents or other organics for use, reuse, or sale (for example, a primary condenser on a solvent recovery unit) is not a control device.

(53) "Corrective action management unit" or "CAMU" means an area within a facility that is designated by the cabinet under 401 KAR 34:287, for the purpose of implementing corrective action requirements under Section 12 of 401 KAR 34:060 and KRS 224.46-520. A CAMU shall only be used for the management of remediation wastes pursuant to implementing such corrective action requirements at the facility.

(54) "Cover" means a device or system which is placed on or over a hazardous waste such that the entire hazardous waste surface area is enclosed and sealed to reduce air emissions to the atmosphere. A cover may have openings such as access hatches, sampling ports, and gauge wells that are necessary for operation, inspection, maintenance, or repair of the unit on which the cover is installed provided that each opening is closed and sealed when not in use. Examples of covers include a fixed roof installed on a tank, a floating membrane cover installed on a surface impoundment, a lid installed on a drum, and an enclosure in which an open container is placed during waste treatment.

(55) "Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(56) "Current closure and postclosure cost estimates" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:090 or Section 1(1), (2) and (3) of 401 KAR 35:090.

(57) "Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

(58) "Current plugging and abandonment cost estimates" as used in subsection (1) of this section refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer (see 40 CFR 144.70(f)).

(59) "Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 40 CFR 144.62(a), (b), and (c).

(60) "Current postclosure cost estimate" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:100 or Section 1(1), (2) and (3) of 401 KAR 35:100.

(61) "Debris" means solid material exceeding a 60mm particle size that is intended for disposal and that is: a manufactured object; plant or animal matter; or natural geologic material. However, the following materials are not debris: Any material for which a specific treatment standard is provided in 401 KAR 37:040, namely lead acid batteries, cadmium batteries, and radioactive lead soils; Process residuals such as smelter slag and residues from the treatment of waste, wastewater, sludges, or air emission residues; and intact containers of hazardous waste that are not ruptured and that retain

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at least 75% of their original volume. A mixture of debris that has not been treated to the standards provided by Section 6 of 401 KAR 37:040 and other material is subject to regulation as debris if the mixture is comprised primarily of debris, by volume, based on visual inspection.

(62) "Designated facility" means a hazardous waste treatment, storage, or disposal facility which:

(a) Has received a hazardous waste site or facility permit (or a facility with interim status) in accordance with the requirements of 401 KAR Chapter 38;

(b) Has received a permit from a state authorized in accordance with 40 CFR Part 271, and EPA permit (or a facility with interim status) in accordance with 40 CFR Parts 270 and 124; or

(c) Is regulated under Section 6(3)(b) of 401 KAR 31:010 or 401 KAR Chapter 36, 40 CFR 261.6(c)(2) or 40 CFR Part 266, and that has been designated on the manifest by the generator pursuant to Section 1 of 401 KAR 32:020. If a waste is destined to a hazardous waste site or facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility shall be a facility allowed by the receiving state to accept that waste.

(63) "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in Section 4(1) and (3) of 401 KAR 43:020 and Section 4(1) and (3) of 401 KAR 43:030. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

(64) "Destruction or adverse modification" means an alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

(65) "Dike" means an embankment or ridge of either natural or manmade materials used to prevent the movement of liquids, sludges, solids, or other materials.

(66) "Direct transfer equipment" means any device (including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps) that is used to distribute, meter, or control the flow of hazardous waste between a container (for example, transport vehicle) and a boiler or industrial furnace.

(67) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

(68) "Disposal" shall have the meaning specified in KRS 224.01-010.

(69) "Distillate receiver" means a container or tank used to receive and collect liquid material (condensed) from the overhead condenser of a distillation unit and from which the condensed liquid is pumped to larger storage tanks or other process units.

(70) "Distillation operation" means an operation, either batch or continuous, separating one (1) or more feed stream(s) into two (2) or more exit streams, each exit stream having component concentrations different from those in the feed stream(s). The separation is achieved by the redistribution of the components between the liquid and vapor phase as they approach equilibrium within the distillation unit.

(71) "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(72) "Double block and bleed system" means two (2) block valves connected in series with a bleed valve or line that can vent the line between the two (2) block valves.

(73) "Draft permit" shall have the same meaning as "proposed permit".

(74) "Drip pad" means an engineered structure consisting of a curbed, free-draining base, constructed of nonearthen materials and designed to convey preservative kick-back or drippage from treated

wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(75) "Effluent Limitations" shall have the same meaning as KRS 224.01-010.

(76) "Elementary neutralization unit" means a device which:

(a) Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in Section 3 of 401 KAR 31:030, or they are listed in 401 KAR 31:040 only for this reason; and

(b) Meets the definition of tank, tank system, container, transport vehicle, or vessel in this section.

(77) "Emergency permit" means a permit issued by the cabinet to temporarily store, treat or dispose of hazardous waste in accordance with the provisions of Section 2 of 401 KAR 38:060, to temporarily manage, process, or dispose of a solid waste in accordance with the provisions of Section 2 of 401 KAR 47:150 or to temporarily store, treat, or dispose of special waste in accordance with the provisions of Section 1 of 401 KAR 45:135.

(78) "Endangered or threatened species" means any species listed as such pursuant to Section 4 of the Endangered Species Act, as amended, 16 USC 1536.

(79) "Engineer" shall have the meaning specified in KRS 322.010. An independent, professional engineer shall be registered in Kentucky pursuant to KRS 322.040 and shall be qualified to engage in waste management engineering practices.

(80) "EPA acknowledgment of consent" means the cable sent to EPA from the U.S. Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

(81) "EPA hazardous waste number" means the number assigned by EPA and the cabinet to each hazardous waste listed in 401 KAR 31:040, and to each characteristic identified in 401 KAR 31:030.

(82) "EPA identification number" means the number assigned by EPA or the cabinet to each generator; transporter; or treatment, storage, or disposal facility.

(83) "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice and which has a channel bottom that is always above the local water table.

(84) "Equipment" means each valve, pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, or flange, and any control devices or systems required by this administrative regulation.

(85) "Equivalent method" means any testing or analytical method, approved jointly by the administrator and the secretary under 401 KAR Chapter 31, or methods in 401 KAR Chapters 47 and 48, approved by the secretary of the cabinet.

(86) "Existing" indicates a boiler or industrial furnace that on or before August 21, 1991 is either in operation burning, or processing hazardous waste or for which construction (including the ancillary facilities to burn or to process the hazardous waste) has commenced.

(87) "Existing component" shall have the same meaning as "existing tank system."

(88) "Existing facility" shall have the same meaning as "existing hazardous waste site or facility".

(89) "Existing hazardous waste site or facility" means a hazardous waste facility which was in operation, or for which continuous construction had commenced, on or before November 19, 1980. A facility has commenced construction if:

(a) The owner or operator had obtained the federal, state and local approvals or permits necessary to begin physical construction; and

(b) Either:

1. A continuous on-site, physical construction program has begun;

or

2. The owner or operator has entered into contractual obligations,

which cannot be canceled or modified without substantial loss, for physical construction of the facility to be completed within a reasonable time.

(90) "Existing portion" means that land surface area of an existing hazardous waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

(91) "Existing tank system" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(a) A continuous on-site physical construction or installation program has begun; or

(b) The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the site or installation of the tank system to be completed within a reasonable time.

(92) "External floating roof" means a pontoon or double-deck type floating roof that rests on the surface of a hazardous waste being managed in a tank that has no fixed roof.

(93) "Face amount" means the total amount the insurer is obligated to pay under the policy.

(94) "Facility" means:

(a) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).

(b) For the purpose of implementing corrective action under Section 12 of 401 KAR 34:060, all contiguous property under the control of the owner or operator seeking a hazardous waste permit. This definition also applies to facilities implementing corrective action under KRS 224.46-520.

(95) "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation, and the United States Government Printing Office.

(96) "Federal, state, and local approvals or permits necessary to begin physical construction" means permits and approvals required under federal, state, or local hazardous waste control statutes, administrative regulations, or ordinances.

(97) "Final closure" of a hazardous waste site or facility means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under 401 KAR Chapters 34 and 35 are no longer conducted at the facility unless subject to the provisions in Section 5 of 401 KAR 32:030.

(98) "First attempt at repair" means to take rapid action for the purpose of stopping or reducing leakage of organic material to the atmosphere using best practices.

(99) "Fiscal year" means a twelve (12) month period for accounting and other financial purposes.

(100) "Fixed roof" means a rigid cover that is installed in a stationary position so that it does not move with fluctuations in the level of the hazardous waste placed in a tank.

(101) "Flame zone" means the portion of the combustion chamber in a boiler occupied by the flame envelope.

(102) "Floating membrane cover" means a cover consisting of a synthetic flexible membrane material that rests upon and is supported by the hazardous waste being managed in a surface impoundment.

(103) "Floating roof" means a pontoon-type or double-deck type cover that rests upon and is supported by the hazardous waste being managed in a tank, and is equipped with a closure seal or seals to close the space between the cover edge and the tank wall.

(104) "Flood plain" means areas adjoining inland waters which are inundated by the base flood, unless otherwise specified in 401 KAR 30:031 or 401 KAR 47:030, and includes: 100-year floodplain and floodway.

(105) "Floodway" means the channel of the waterway, stream or river and that portion of the adjoining floodplain which provides for passage of the 100-year flood flow without increasing the floodwater depth across the 100-year floodplain by more than one (1) foot.

(106) "Flow indicator" means a device that indicates whether gas flow is present in a vent stream.

(107) "Food chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(108) "Fractionation operation" means a distillation operation or method used to separate a mixture of several volatile components of different boiling points in successive stages, each stage removing from the mixture some proportion of one of the components.

(109) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(110) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.

(111) "Generator" shall have the meaning specified in KRS 224.01-010.

(112) "Governing body" shall have the same meaning as KRS 224.01-010.

(113) "Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.

(114) "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table, and perched water zones below the B-soil horizon, including water circulating through fractures, bedding planes, and solution conduits.

(115) "Halogenated organic compounds" or "HOCs" means those compounds having a carbon-halogen bond that are listed under 401 KAR 37:110.

(116) "Hazardous constituent" shall have the meaning specified in KRS 224.01.010.

(117) "Hazardous waste constituent" means a constituent which caused the cabinet to list the hazardous waste in 401 KAR 31:040, or a constituent listed in Section 5(3) of 401 KAR 31:030.

(118) "Hazardous waste management unit shutdown" means a work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit. An unscheduled work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit for less than twenty-four (24) hours is not a hazardous waste management unit shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping operation are not hazardous waste management unit shutdowns.

(119) "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed. Hazardous waste management units include: aboveground tank; component; existing tank system or existing component; in-ground tank; new tank system or new tank component; on-ground tank; tank system; underground tank; or unfit-for-use tank system.

(120) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

(121) "Hazardous waste site or facility" means any place at which hazardous waste is treated, stored, or disposed of by landfilling, incineration, or any other method. Hazardous waste site or facility includes: boiler; disposal facility; elementary neutralization unit; incinerator; industrial furnace; hazardous waste transfer facility; injection well; landfill; land treatment facility; miscellaneous unit; pile or waste pile; replacement unit; storage facility; sludge dryer; surface impoundment; tank; thermal treatment facility; totally enclosed treatment facility; treatment facility; or wastewater treatment unit.

(122) "Hazardous waste transfer facility" means any transportation related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

(123) "Hazardous waste" shall have the meaning specified in KRS 224.01-010.

(124) "Holocene" means the most recent epoch of the quaternary period, extending from the end of the pleistocene to the present.

(125) "Hot well" means a container for collecting condensate as in a steam condenser serving a vacuum-jet or steam-jet ejector.

(126) "Household waste" means any waste material (including garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

(127) "In existence" shall have the same meaning as "existing."

(128) "In gas service" means that the piece of equipment contains or contacts a hazardous waste stream that is in the gaseous state at operating conditions.

(129) "In heavy liquid service" means that the piece of equipment is not in gas service or in vapor service or in light liquid service.

(130) "In light liquid service" means that the piece of equipment contains or contacts a waste stream where the vapor pressure of one (1) or more of the components in the stream is greater than three-tenths (0.3) kilopascals (kPa) at twenty (20) degrees Centigrade, the total concentration of the pure components having a vapor pressure greater than three-tenths (0.3) kPa at twenty (20) degrees Centigrade is equal to or greater than twenty (20) percent by weight, and the fluid is a liquid at operating conditions.

(131) "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

(132) "In situ sampling systems" means nonextractive samplers or in-line samplers.

(133) "In vacuum service" means that equipment is operating at an internal pressure that is at least 5 kPa below ambient pressure.

(134) "In vapor service" shall have the same meaning as "in gas service".

(135) "In-ground tank" means a device meeting the definition of "tank" in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(136) "Inactive portion" means that portion of a hazardous waste site or facility which was not operated after November 19, 1980.

(137) "Incinerator" means any enclosed device that:

(a) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(b) Meets the definition of infrared incinerator or plasma arc incinerator.

(138) "Incompatible waste" means a hazardous waste which is unsuitable for placement in a particular device or facility because it may cause corrosion or decay of containment materials, or unsuitable for commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(139) "Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally

accepted auditing standards.

(140) "Individual generation site" means the contiguous site at or on which one (1) or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one (1) or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

(141) "Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

(a) Cement kilns;

(b) Lime kilns;

(c) Aggregate kilns;

(d) Phosphate kilns;

(e) Coke ovens;

(f) Blast furnaces;

(g) Smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);

(h) Titanium dioxide chloride process oxidation reactors;

(i) Methane reforming furnaces;

(j) Pulp liquor recovery furnaces;

(k) Combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(l) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least three (3) percent, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of twenty (20) percent as generated; or

(m) Other devices as the cabinet may, after notice and comment, add to this list on the basis of criteria and Section 5 of 401 KAR 30:080.

(142) "Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(143) "Injection well" means a well into which fluids are injected to achieve subsurface emplacement.

(144) "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained hazardous waste or reagents used to treat the hazardous waste.

(145) "Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of a hazardous waste management unit including tank systems.

(146) "Interim status" means the designation of a hazardous waste site or facility which was in existence on November 19, 1980, and has submitted a Part A application under 401 KAR Chapter 38 or under 40 CFR Part 270 and is treated as having a permit until final administrative disposition of the application is made.

(147) "Intermittent stream" means a stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year.

(148) "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

(149) "Internal floating roof" means a floating roof that rests or floats on the surface (but not necessarily in complete contact with it) of a hazardous waste being managed in a tank that has a fixed roof.

(150) "IUC well" means a underground injection control well as provided in 40 CFR Part 144.

(151) "Karst terrain" means a type of topography where limestone,

dolomite or gypsum is present and is characterized by naturally occurring closed topographic depressions or sinkholes, caves, disrupted surface drainage, and well developed underground solution channels formed by dissolution of these rocks by water moving underground.

(152) "Key personnel" shall have the meaning specified in KRS 224.01-010.

(153) "Lab pack" means any large container equal to or smaller than fifty-five (55) gallons that holds many smaller containers of various content tightly secured with packing material.

(154) "Lamp" means the bulb or tube portion of a lighting device specifically designed to produce radiant energy, most often in the ultraviolet (UV), visible, and infrared (IR) regions of the electromagnetic spectrum. Examples of common lamps include, but is not limited to, incandescent, fluorescent, high pressure sodium, mercury vapor, metal halide, high intensity discharge, and neon lamps.

(155) "Land disposal" shall have the meaning specified in KRS 224.01-010.

(156) "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface. These facilities are disposal facilities if the waste will remain after closure.

(157) "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

(158) "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(159) "Large quantity handler of universal waste" means a universal waste handler who accumulates 5,000 kilograms or more total universal waste (batteries, lamps, pesticides, or thermostats, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total of universal waste is accumulated.

(160) "Leachate" means any liquid including any suspended components in the liquid, that has percolated through or drained from waste.

(161) "Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment system or the presence of a release of hazardous waste, hazardous waste constituents or accumulated liquid in the secondary containment system. Such a system shall employ operational controls (daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment system or the presence of a release of hazardous waste constituents or accumulated liquids into the secondary containment system.

(162) "Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

(163) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(164) "Liner" means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, ground water, or surface water at any time during the active life of the facility.

(165) "Liquid-mounted seal" means a foam or liquid-filled primary seal mounted in contact with the hazardous waste between the tank

wall and the floating roof continuously around the circumference of the tank.

(166) "Local government" means the fiscal court of the county, urban-county government, or governing body of an incorporated municipality wherein a hazardous waste landfill or other site or facility for the land disposal of hazardous waste is proposed.

(167) "Major modification" means for hazardous waste sites or facilities, a change in ownership where the cabinet determines that other changes in the permit are necessary as a result of the change in ownership or operational control, area occupied, disposal method, or other significant change in the operation of a waste site or facility (Note: Minor modifications are described in Section 3 of 401 KAR 38:040).

(168) "Malfunction" means any sudden failure of a control device or a hazardous waste management unit or failure of a hazardous waste management unit to operate in a normal or usual manner, so that organic emissions are increased.

(169) "Manifest document number" means the EPA twelve (12) digit identification number assigned to the generator plus a unique, serially increasing, five (5) digit document number assigned to the manifest by the generator for recordkeeping and reporting purposes.

(170) "Manifest" shall have the meaning specified in KRS 224.01-010.

(171) "Maximum organic vapor pressure" means the equilibrium partial pressure exerted by the hazardous waste contained in a tank determined at the temperature equal to either: (1) the local maximum monthly average temperature as reported by the National Weather Service when the hazardous waste is stored or treated at ambient temperature; or (2) the highest calendar-month average temperature of the hazardous waste when the hazardous waste is stored at temperatures above the ambient temperature or when the hazardous waste is stored or treated at temperatures below the ambient temperature.

(172) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

(173) "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of, and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR Part 146, containment building, corrective action management unit, or unit eligible for a research, development, and demonstration permit under Section 6 of 401 KAR 38:060.

(174) "Monitoring well" means a well used to obtain water samples for water quality and quantity analysis and groundwater levels.

(175) "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.

(176) "Movement" means that hazardous waste transported to a facility in an individual vehicle.

(177) "Net working capital" means current assets minus current liabilities.

(178) "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

(179) "New tank component" shall have the same meaning as "new tank system."

(180) "New tank system" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation commenced after July 14, 1986; however, for purposes of Section 4(7)(b) of 401 KAR 34:190 and Section 4(7)(b) of 401 KAR 35:190, a new tank system is one for which construction commenced after July 14, 1986.

(181) "New" means any hazardous waste site or facility that commenced construction after November 19, 1980.

(182) "No detectable organic emissions" means no escape of organics from a device or system to the atmosphere as determined by an instrument reading less than 500 parts per million by volume (ppmv) above the background level at each joint, fitting, and seal when measured in accordance with the requirements of Method 21 in 40 CFR part 60, appendix A, and by no visible openings or defects in the device or system such as rips, tears, or gaps.

(183) "Nonsudden accidental occurrence" means an occurrence that takes place over time and involves continuous or repeated exposure.

(184) "Nonwastewaters" means wastes that do not meet the criteria for wastewaters found in the definition for wastewaters.

(185) "Not detected" means at or below the lower method calibration limit (MCL) in SW-846, Method 8290, Table 1.

(186) "Off-site" means properties noncontiguous to the site.

(187) "On-site" means on the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing, as opposed to going along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access is also considered on-site property.

(188) "Onground tank" means a device meeting the definition of tank that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(189) "Open burning" means the combustion of any material or solid waste without:

(a) Control of combustion air to maintain adequate temperature for efficient combustion;

(b) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(c) Control of emission of the gaseous combustion products.

(190) "Open-ended valve or line" means any valve, except pressure relief valves, having one (1) side of the valve seat in contact with process fluid and one (1) side open to the atmosphere, either directly or through open piping.

(191) "Operational plan" means the approved plan of operations filed with the cabinet which describes the method of operation that the permittee will use in the treatment, storage, or disposal of wastes.

(192) "Operator" means any person responsible for overall operation of an on-site or off-site waste facility, including any private contractor conducting operational activities at a federal facility.

(193) "Other site or facility for the land disposal of hazardous waste" means a disposal facility but shall not include a storage facility or a treatment facility.

(194) "Owner" means any person who owns an on-site or off-site waste facility, or any part of a facility.

(195) "Parent corporation" means a corporation which directly owns at least fifty (50) percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

(196) "Part A of the application" or "Part A" means the standard forms or format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:080.

(197) "Part B of the application" or "Part B" means the standard format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:090 to 401 KAR 38:210.

(198) "Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of 401 KAR Chapters 34 and 35 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management

unit, while other units of the same facility continue to operate.

(199) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface run-off. The term does not include "intermittent stream" or "ephemeral stream".

(200) "Permit by rule" means authorization allowing certain classes of sites or facilities to manage waste consistent with 401 KAR Chapters 30 to 49, without submission of a registration or permit application to the cabinet. Examples of hazardous waste sites or facilities which are permitted by rule include facilities operating under an interim status permit and facilities identified in Section 1 of 401 KAR 38:060.

(201) "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management administrative regulations. The term permit includes permit-by-rule, registered permit-by-rule, research, development, and demonstration permit, and emergency permit. However, the term permit does not include draft permit or proposed permit.

(202) "Permittee" means any person holding a valid permit issued by the cabinet to manage, treat, store, or dispose of waste.

(203) "Person" shall have the meaning specified in KRS 224.01-010.

(204) "Personnel" or "facility personnel" means all persons who work at or oversee the operations of a waste facility, and whose actions or failure to act may result in noncompliance with the requirements of the waste management administrative regulations.

(205) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(a) Is a new animal drug under FFDCa section 201(w), or

(b) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or

(c) Is an animal feed under FFDCa section 201(x) that bears or contains any substances described by paragraph (a) or (b) of this subsection.

(206) "Pile" or "waste pile" means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

(207) "Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame and which is not listed as an industrial furnace.

(208) "Point of compliance" means for solid waste site and facilities, groundwater monitoring wells located within 250 feet of the waste boundary as approved by the cabinet.

(209) "Point of waste origination" means as follows:

(a) When the facility owner or operator is the generator of the hazardous waste, the point of waste origination means the point where a solid waste produced by a system, process, or waste management unit is determined to be a hazardous waste as defined in 40 CFR part 261.

(b) When the facility owner and operator are not the generator of the hazardous waste, point of waste origination means the point where the owner or operator accepts delivery or takes possession of the hazardous waste.

(210) "Point of waste treatment" means the point where a hazardous waste exits a waste management unit used to destroy, degrade, or remove organics in the hazardous waste.

(211) "Point source" means any discernible, confined, and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(212) "Pollutant" shall have the same meaning as KRS 224.01-

010.

(213) "Polychlorinated biphenyls" or "PCB" means halogenated organic compounds defined in accordance with 40 CFR 761.2 as of July 1989.

(214) "Postclosure care" means the manner in which a facility shall be maintained when it no longer accepts waste for disposal.

(215) "Postclosure monitoring and maintenance" shall have the meaning specified in KRS 224.01-010.

(216) "Postclosure plan" means the plan for postclosure care prepared in accordance with the requirements of Sections 8 to 11 of 401 KAR 34:070 or Sections 8 to 11 of 401 KAR 35:070.

(217) "Pressure release" means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device.

(218) "Primary exporter" means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with Section 1 of 401 KAR 32:020 which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

(219) "Process heater" means a device that transfers heat liberated by burning fuel to fluids contained in tubes, including all fluids except water that are heated to produce steam.

(220) "Process vent" means any open-ended pipe or stack that is vented to the atmosphere either directly, through a vacuum-producing system, or through a tank (distillate receiver, condenser, bottoms receiver, surge control tank, separator tank, or hot well) associated with hazardous waste distillation fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations.

(221) "Property damage" shall have the meaning given by applicable Kentucky statutes. Property damage does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for property damage.

(222) "Proposed permit" means a document prepared by the cabinet indicating the cabinet's tentative decision to issue or deny, modify, revoke or terminate a permit.

(223) "Publicly owned treatment works" or "POTW" shall have the meaning specified in KRS 224.01-010.

(224) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump.

(225) "Qualified groundwater scientist" means a geologist registered in Kentucky who has received a baccalaureate or postgraduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields to enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

(226) "Receiving country" means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal (except short-term storage incidental to transportation).

(227) "Recharge zone" means an area supplying the water which enters an underground drinking water source.

(228) "Reclaimed" means a material that is processed to recover a usable product, or that is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents.

(229) "Recovered material" shall have the meaning specified in KRS 224.01-010.

(230) "Recyclable materials" means hazardous wastes that are recycled.

(231) "Recycled" means a material that is used, reused, or reclaimed.

(232) "Recycling" shall have the meaning specified in KRS 224.01-010.

(233) "Regional integrated waste treatment and disposal demonstration facility" shall have the meaning specified in KRS 224.01-010.

(234) "Regulated unit" means hazardous waste land disposal

sites or facilities, or portions of existing hazardous waste land disposal sites or facilities that continued to receive waste after January 26, 1983.

(235) "Remediation waste" means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under Section 12 of 401 KAR 34:060 and KRS 224.46-520. For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing KRS 224.46-520 for releases beyond the facility boundary.

(236) "Repaired" means that equipment is adjusted, or otherwise altered, to eliminate a leak.

(237) "Replacement unit" means a landfill, surface impoundment, or waste pile unit from which all or substantially all of the waste is removed, and that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or approved corrective action.

(238) "Representative sample" means a sample of a universe or whole (for example, waste pile, lagoon, or groundwater) which can be expected to exhibit the average properties of the universe or whole.

(239) "Research, development, and demonstration permit" means a permit issued by the cabinet for a hazardous waste treatment facility that utilizes an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under 401 KAR Chapters 34 through 36.

(240) "Resource recovery" means the recovery of material or energy from waste.

(241) "Run-off" means any rainwater, leachate, or other liquid that drains overland from any part of a facility.

(242) "Run-on" means any rainwater, leachate, or other liquid that drains overland onto any part of a facility.

(243) "Saturated zone" shall have the same meaning as "zone of saturation".

(244) "Schedule of compliance" means a schedule of remedial measures included in a permit or cabinet order, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with KRS Chapter 224 and 401 KAR Chapters 30 to 49.

(245) "Scrap metal" is bits and pieces of metal parts (for example, bars, turnings, rods, sheets, or wire) or metal pieces that may be combined together with bolts or soldering (for example, radiators, scrap automobiles, or railroad boxcars), which when worn or superfluous can be recycled.

(246) "Secretary" shall have the meaning specified in KRS 224.01-010.

(247) "Sensor" means a device that measures a physical quantity or the change in a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

(248) "Separator tank" means a device used for separation of two immiscible liquids.

(249) "Sewage system" shall have the meaning specified in KRS 224.01-010.

(250) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the waste facility or activity.

(251) "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 BTU per pound of sludge treated on a wet-weight basis.

(252) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater

treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.

(253) "Small quantity generator" means a generator who generates more than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month.

(254) "Small quantity handler of universal waste" means a universal waste handler who does not accumulate more than 5,000 kilograms of universal waste (batteries, lamps, pesticides, or thermostats, collected collectively) at any time.

(255) "Solid waste management unit" shall mean any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at a facility at which solid wastes have been routinely and systematically released.

(256) "Solvent extraction operation" means an operation or method of separation in which a solid or solution is contacted with a liquid solvent (the two (2) being mutually insoluble) to preferentially dissolve and transfer one (1) or more components into the solvent.

(257) "Sorb" means to either adsorb, absorb, or both.

(258) "Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both.

(259) "Spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

(260) "Spill" means any accidental spilling, leaking, pumping, pouring, emitting, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes into or on any land or water.

(261) "Start-up" means the setting in operation of a hazardous waste management unit or control device for any purpose.

(262) "State" means any of the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands or Guam but does not include any foreign country.

(263) "Steam stripping operation" means a distillation operation in which vaporization of a volatile constituents of a liquid mixture takes place by the introduction of steam directly into the charge.

(264) "Storage facility" means a facility or part of a facility at which hazardous waste is held for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere. A generator who accumulates his own hazardous wastes in an approved manner for less than ninety (90) days for subsequent transport on site or off site is not operating or maintaining a storage facility.

(265) "Storage of hazardous waste" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed, or stored elsewhere.

(266) "Storage" shall have the meaning specified in KRS 224.01-010.

(267) "Substantial business relationship" means the extent of a business relationship necessary to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" shall arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the cabinet.

(268) "Sudden accidental occurrence" means an occurrence which is not continuous or repeated in nature.

(269) "Sump" means any pit or reservoir that meets the definition of tank, and those troughs and trenches connected to it, that serves to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile administrative regulations, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(270) "Surface impoundment" means a facility or part of a facility

which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(271) "Surge control tank" means a large-sized pipe or storage reservoir sufficient to contain the surging liquid discharge of the process tank to which it is connected.

(272) "Tangible net worth" means the tangible assets that remain after deducting liabilities; these assets would not include intangibles such as goodwill and rights to patents or royalties.

(273) "Tank" means a stationary device designed to contain an accumulation of hazardous waste that is constructed primarily of nonearthen materials (for example, wood, concrete, steel, or plastic) which provide structural support and which does not meet the definition of any other unit.

(274) "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

(275) "Termination" shall have the meaning specified in KRS 224.01-010.

(276) "The full amount of the liability coverage to be provided" means the amount of coverage for sudden and nonsudden occurrences required to be provided by the owner or operator, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(277) "Thermal treatment facility" means a facility or part of a facility which uses elevated temperatures as the primary means to change the chemical, physical or biological character or composition of hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge.

(278) "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge (see also "incinerator" and "open burning").

(279) "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of Section 4(3)(b) of 401 KAR 43:020 or Section 4(3)(b) of 401 KAR 43:030.

(280) "Thin-film evaporation operation" means a distillation operation that employs a heating surface consisting of a large diameter tube that may be either straight or tapered, horizontal or vertical. Liquid is spread on the tube wall by a rotating assembly of blades that maintain a close clearance from the wall or actually ride on the film of liquid on the wall.

(281) "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which acid is neutralized.

(282) "Transit country" means any foreign country, other than a receiving country, through which a hazardous waste is transported.

(283) "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body is a separate transport vehicle.

(284) "Transportation" shall have the meaning specified in KRS 224.01-010.

(285) "Transporter" means a person engaged in the off-site

transportation of hazardous waste by air, rail, highway or water.

(286) "Treatability study" means :

(a) A study in which a hazardous waste is subjected to a treatment process to determine:

1. Whether the waste is amenable to the treatment process;
2. What pretreatment, if any, is required;
3. The optimal process conditions needed to achieve the desired treatment;

4. The efficiency of a treatment process for a specific waste or wastes; or

5. The characteristics and volumes of residuals from a particular treatment process.

(b) For the purpose of 401 KAR 31:010, Section 4(5) and (6), exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies.

(c) A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

(287) "Treatment facility" means a facility or part of a facility using any method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste nonhazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

(288) "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

(289) "Treatment" shall have the meaning specified in KRS 224.01-010.

(290) "Underground drinking water source" means:

(a) An aquifer supplying drinking water for human consumption; or

(b) An aquifer in which the groundwater contains less than 10,000 mg/l total dissolved solids.

(291) "Underground injection" means the subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well".)

(292) "Underground tank" means a device meeting the definition of "tank" in this section whose entire surface area is totally below the surface of and covered by the ground.

(293) "Underlying hazardous constituent" means any constituent listed in Section 1 of 401 KAR 37:040, Table - Treatment Standards for Hazardous Wastes, except vanadium and zinc, which can reasonably be expected to be present at the point of generation of the hazardous waste, at a concentration above the constituent-specific treatment standards.

(294) "Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

(295) "Universal waste" means any of the following hazardous wastes that are subject to the universal waste requirements of 401 KAR Chapter 43:

- (a) Batteries as described in Section 2 of 401 KAR 43:010;
- (b) Pesticides as described in Section 3 of 401 KAR 43:010;
- (c) Thermostats as described in Section 4 of 401 KAR 43:010;

and

- (d) Spent lamps as described in Section 5 of 401 KAR 43:010.

(296) "Universal waste handler":

(a) Means:

- (1) A generator of universal waste; or

(2) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a

foreign destination.

(b) Does not mean:

(1) A person who treats (except under the provisions of Sections 4(1) or (3) of 401 KAR 43:020 or Sections 4(1) or (3) of 401 KAR 43:030), disposes of, or recycles universal waste; or

(2) A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

(297) "Universal waste transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.

(298) "Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

(299) "Unsaturated zone" shall have the same meaning as "Zone of aeration".

(300) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(301) "Used oil" shall have the same meaning as KRS 224.50-545.

(302) "Used or reused" means a material that is either:

(a) Employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one (1) process used as feedstock in another process). However, a material shall not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

(b) Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

(303) "Vapor incinerator" means any enclosed combustion device that is used for destroying organic compounds and does not extract energy in the form of steam or process heat.

(304) "Vapor recovery system" means that equipment, device, or apparatus capable of collecting vapors and gases discharged from a storage tank, and a vapor processing system capable of affecting such vapors and gases so as to prevent their emission into the atmosphere.

(305) "Vapor-mounted seal" means a foam-filled primary seal mounted continuously around the circumference of the tank so that there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the hazardous waste surface, and the floating roof.

(306) "Vented" means discharged through an opening, typically an open-ended pipe or stack, allowing the passage of a stream of liquids, gases, or fumes into the atmosphere. The passage of liquids, gases, or fumes is caused by mechanical means such as compressors or vacuum-producing systems or by process-related means such as evaporation produced by heating and not caused by tank loading and unloading (work losses) or by natural means such as diurnal temperature changes.

(307) "Vessel" means any watercraft used or capable of being used as a means of transportation on the water.

(308) "Volatile organic concentration" or "VO concentration" means the fraction by weight of organic compounds in a hazardous waste expressed in terms of parts per million (ppmw) as determined by direct measurement using Method 25D or by knowledge of the waste in accordance with the requirements of Section 4 of 401 KAR 35:040.

(309) "Washout" means the carrying away of waste by waters as a result of flooding.

(310) "Waste boundary" means the outermost perimeter of the

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waste (projected in the horizontal plane) as it would exist at completion of the disposal activity.

(311) "Waste determination" means performing all applicable procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine whether a hazardous waste meets standards specified in 401 KAR Chapter 35. Examples of a waste determination include performing the procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine the average VO concentration of a hazardous waste at the point of waste origination; the average VO concentration of a hazardous waste at the point of waste treatment and comparing the results to the exit concentration limit specified for the process used to treat the hazardous waste; determining the organic reduction efficiency and the organic biodegradation efficiency for a biological process used to treat a hazardous waste and comparing the results to the applicable standards; or the maximum volatile organic vapor pressure for a hazardous waste in a tank and comparing the results to the applicable standards.

(312) "Waste pile" shall have the same meaning as "pile".

(313) "Waste stabilization process" means any physical or chemical process used to either reduce the mobility of hazardous constituents in a hazardous waste or eliminate free liquids as determined by Test Method 9095 (Paint Filter Liquids Test) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW-846, Third Edition, September 1986, as amended by Update I, November 15, 1992 (incorporated by reference-refer to § 260.11 of this chapter). A waste stabilization process includes mixing the hazardous waste with binders or other materials, and curing the resulting hazardous waste and binder mixture. Other synonymous terms used to refer to this process are "waste fixation" or "waste solidification."

(314) "Waste" shall have the meaning specified in KRS 224.01-010.

(315) "Wastewaters" means wastes that contain less than one (1) percent by weight total organic carbon (TOC) and less than one (1) percent by weight total suspended solids (TSS), with the following exceptions:

(a) F001, F002, F003, F004, F005, wastewaters are solvent-water mixtures that contain less than one (1) percent by weight TOC or less than one (1) percent by weight total F001, F002, F003, F004, F005 solvent constituents listed in Section 1 of 401 KAR 37:040 in Table Treatment Standards for Hazardous Waste;

(b) K011, K013, K014 wastewaters contain less than five (5) percent by weight TOC and less than one (1) percent by weight TSS, as generated; and

(c) K103 and K104 wastewaters contain less than four (4) percent by weight TOC and less than one (1) percent by weight TSS.

(316) "Wastewater treatment unit" means a device that:

(a) Is part of a wastewater treatment facility that is subject to administrative regulation under either section 402 or 307(b) of the CWA;

(b) Receives and treats or stores an influent wastewater which is a hazardous waste as defined in 401 KAR 31:010, Section 3; or generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in 401 KAR 31:010, Section 3; or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Section 3 of 401 KAR 31:010; and

(c) Meets the definition of tank or tank system in this administrative regulation.

(317) "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

(318) "Water" or "Waters of the Commonwealth" shall have the meaning specified in KRS 224.01-010.

(319) "Well" means any shaft or pit dug or bored into the earth, generally of cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(320) "Wetlands" means land that has a predominance of hydric soils and is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(321) "Zone of aeration" means that region of the soil or rock between the land surface and the nearest saturated zone in which the interstices are occupied partially by air.

(322) "Zone of engineering control" means an area under the control of the owner or operator that upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to waters of the Commonwealth.

(323) "Zone of saturation" means that part of the earth's crust containing groundwater in which all voids, large and small, are filled with liquid.

Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by context, acronyms and abbreviations used in 401 KAR Chapter 31 shall have the meaning as identified in Table 1 of this administrative regulation.

Table 1. Acronyms and Abbreviations.

Am.	Amended
C	Corrosive waste
CAA	Clean Air Act, as amended
CFR	Code of Federal Regulations
cm	Centimeter
cm ²	Centimeter squared
CO	Carbon monoxide
CO ₂	Carbon dioxide
CWA	Clean Water Act, as amended
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980
DOT	United States Department of Transportation
DRE	Destruction and removal efficiency
E	Explosive waste
eff.	Effective
EPA	United States Environmental Protection Agency
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act
FIA	Federal Insurance Administration
FR	Federal Register
H	Acutely hazardous waste
ha	Hectare
HTMR	High temperature metals recovery
HSWA	Hazardous and Solid Waste Amendments of 1994
I	Ignitable waste
KAR	Kentucky Administrative Regulation
kg	Kilogram
KPDES	Kentucky Pollution Discharge Elimination System
KRS	Kentucky Revised Statute
Ky.R.	Administrative Register of Kentucky
l	Liter
LC	Lethal concentration
LD	Lethal dose
ml	Milliliter
mm	Millimeter
N	Normal
NESHAPS	National Emissions Standards for Hazardous Air Pollutants
NPDES	National Pollutant and Discharge Elimination System
PCB	Polychlorinated biphenyl
pCi/l	Picocuries per liter

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PHC	Principal hazardous constituent
Permit POHC	Permitted principal organic hazardous constituent
PM	Particulate matter
POHC	Principal organic hazardous constituent
ppm	parts per million
Trial POHC	Trial burn principal organic hazardous constituent
POTW	Publicly owned treatment works
PSD	Prevention of significant deterioration
psi	Pounds per square inch
psig	Pounds per square inch gauge
R	Reactive waste
RCRA	Resource Conservation and Recovery Act, as amended
SDWA	Safe Drinking Water Act, as amended
SEC	Securities and Exchange Commission
SIC	Standard Industrial Classification Code
SPCC	Spill Prevention, Control, and Countermeasures Plan
T	Toxic waste
UIC	Underground Injection Control
UICP	Underground Injection Control Program
USC	United States Code
U.S. EPA	United States Environmental Protection Agency
USGS	United States Geological Survey
USPS	United States Postal Service

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: This regulation does not affect any entities, because it only defines terms used in the chapter. The regulation was promulgated to comply with KRS 13A.222.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The cabinet will experience no additional costs or savings by promulgating the amendments to this regulation.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: There will be no additional factors affecting costs.

b. Reporting and paperwork requirements: There will be no extra paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on the state and local revenue with the promulgation of this regulation.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No costs are imposed with the promulgation of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: There were no other alternatives. These changes are consistent with KRS 13A.222 requirements.

8. Assessment of expected benefits of the administrative regulation: The benefit is having the definitions clearly stated at the beginning of each chapter.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Not applicable since no requirements are imposed.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Tiering is applied to all of Kentucky's hazardous waste regulations based on type and quantity of hazardous waste generated or managed and type of management

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activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments establish definitions of hazardous waste terms and the clarification of certain definitions. This regulation is necessary to maintain consistency between state and federal programs. In addition, the regulation has been modified to reflect regulation construction specified in KRS 13A.222.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that manages hazardous waste.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. This administrative regulation establishes definitions for all terms within 401 KAR Chapter 31. These terms are assimilated from existing federal regulatory definitions and existing statutory definitions where applicable.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): Because this administrative regulation only establishes definitions for 401 KAR Chapter 31, this administrative regulation will not affect state, county, or local expenditures.

Other Explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (New Administrative Regulation)

401 KAR 32:005. Definitions related to 401 KAR Chapter 32.

RELATES TO: KRS 224.01, 224.10, 224.46, 40 CFR 260.10

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: This chapter implements provi-

sions of KRS 224.46-510 and establishes the general provisions applicable to generators of hazardous waste. This administrative regulation defines essential terms that are used in this chapter.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or otherwise specifically indicated by context, terms in 401 KAR Chapter 32 shall have the meanings given in this Section.

(1) "100-year floodplain" means any land area which is subject to a one (1) percent or greater chance of flooding in any given year from any source.

(2) "100-year flood" means a flood that has a one (1) percent chance of being equaled or exceeded in any given year.

(3) "Aboveground tank" means a device meeting the definition of "tank" and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

(4) "Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

(5) "Accumulated speculatively" means that a material is accumulated before being recycled.

(a) A material is not accumulated speculatively, if the person accumulating it can show:

1. That the material is potentially recyclable and has a feasible means of being recycled; and

2. That - during the calendar year (commencing on January 1) - the amount of material that is recycled, or transferred to a different site for recycling, equals at least seventy-five (75) percent by weight or volume of the amount of that material accumulated at the beginning of the calendar year (including any material accumulated from previous years).

(b) In calculating the percentage of turnover, the seventy-five (75) percent requirement is to be applied to each material of the same type that is recycled in the same way. Materials accumulating in units that would be exempt from administrative regulation under Section 4(3) of 401 KAR 31:010 are not to be included in making the calculation. (Materials that are already defined as wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling.

(6) "Active fault" means a land area which, according to the weight of geological evidence, has a reasonable probability of being affected by movement along a fault to the extent that a waste site or facility would be damaged and thereby pose a threat to human health and the environment.

(7) "Active life" of a facility means the period from the initial receipt of waste at a waste site or facility until the cabinet receives certification of final closure.

(8) "Active portion" means any area of a facility where treatment, storage, or disposal operations are being or have been conducted and which have not been closed. It includes the treated area of a landfarm and the active face of a landfill. Covered, closed, or inactive portions of landfills, building roofs, and roads are excluded unless designated as "active portions" by the cabinet.

(9) "Admixed liner" means a liner made from a mixture of any of a multitude of materials, often asphalt or cement, with widely varying physical and chemical properties. Admixed liners shall be demonstrated to be structurally sound and chemically resistant to the waste placed in it so as to be capable of supporting the waste without cracking or disintegrating or allowing waste or leachate to escape.

(10) "Agricultural waste" means any nonhazardous waste resulting from the production and processing of on-the-farm agricultural products, including manures, prunings and crop residues.

(11) "Air stripping operation" is a desorption operation employed to transfer one (1) or more volatile components from a liquid mixture into a gas (air) either with or without the application of heat to the

liquid. Packed towers, spray towers, and bubble-cap, sieve, or valve-type plate towers are among the process configurations used for contacting the air and a liquid.

(12) "Ampule" means a small sealed glass container for one (1) dose of sterile medicine.

(13) "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to hazardous waste management units including tanks between hazardous waste storage and treatment tanks to a point of disposal on site, or to a point of shipment for disposal off site.

(14) "Application" means the form approved by the cabinet for applying for a permit, including any additions, revisions or modifications and any narrative and drawings required by 401 KAR Chapters 30 to 48. The term includes: Part A of the application (Part A); Part B of the application (Part B); notice of intent; administration application; special waste application; or technical application.

(15) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(16) "As received waste" refers to the waste as received in the shipment from the generator or sample collector.

(17) "Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

(18) "Attenuation" means any decrease in the maximum concentration or total quantity of an applied chemical or biological constituent in a fixed time or distance traveled resulting from a physical, chemical, or biological reaction or transformation occurring in the zone of aeration or zone of saturation.

(19) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit or part of a facility, such as the plant manager, superintendent, or person of equivalent responsibility.

(20) "Average volatile organic concentration" or "average VO concentration" means the mass-weighted average volatile organic concentration of a hazardous waste as determined in accordance with the requirements of Section 4 of 401 KAR 35:281.

(21) "Base flood" means a flood that has a one (1) percent or greater chance of recurring in any year, or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

(22) "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

(23) "Board" shall have the meaning specified in KRS 224.46-810.

(24) "Bodily injury" shall have the meaning given by applicable Kentucky statutes. Bodily injury does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for bodily injury.

(25) "Boiler" means an enclosed device using control flame combustion and having the following characteristics:

(a)1. The unit shall have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

2. The unit's combustion chamber and primary energy recovery section(s) shall be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section (such as water walls and superheaters) shall be physically formed into one (1) manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section are joined only by ducts or connections carrying flue gas is not integrally designed;

however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream) and fluidized bed combustion units; and

3. While in operation, the unit shall maintain a thermal energy recovery efficiency of at least sixty (60) percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

4. The unit shall export and utilize at least seventy-five (75) percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(b) The unit is one (1) which the cabinet has determined, on a case-by-case basis, to be a boiler, after considering the standards in 401 KAR 30:080.

(26) "Bottoms receiver" means a container or tank used to receive and collect heavier bottoms fractions of the distillation feed stream that remain in the liquid phase.

(27) "Burn" means burning for energy recovery or destruction, or processing for materials recovery or as an ingredient.

(28) "By-product" is a material that is not one (1) of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a coproduct that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

(29) "Cabinet" shall have the meaning specified in KRS 224.01-010.

(30) "Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

(31) "Cation exchange capacity" means the sum of exchangeable cations a soil can absorb expressed in milliequivalents per 100 grams of soil as determined by sampling the soil to the depth of cultivation or solid waste placement, whichever is greater, and analyzing by the summation method for distinctly acid soils or the sodium acetate method for neutral, calcareous, or saline soils.

(32) "Certificate" shall have the meaning specified in KRS 224.46-810.

(33) "Certification" means a statement of professional opinion based upon knowledge and belief.

(34) "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements.

(35) "Closed-vent system" means a system that is not open to the atmosphere and that is composed of piping, connections, and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device.

(36) "Closure plan" means the plan for closure prepared in accordance with the requirements of Section 3 of 401 KAR 34:070 or Section 3 of 401 KAR 35:070.

(37) "Closure" shall have the meaning specified in KRS 224.01-010.

(38) "Component" means either the tank or ancillary equipment of a tank system.

(39) "Condenser" means a heat-transfer device that reduces a thermodynamic fluid from its vapor phase to its liquid phase.

(40) "Conditionally exempt small quantity generator" means:

(a) A generator who generates no more than 100 kilograms of hazardous waste in a calendar month; and

(b) A generator who generates acutely hazardous waste listed in Sections 2, 3, and 4(5) of 401 KAR 31:040 in a calendar month in quantities greater than one (1) kilogram. All quantities of that acutely

hazardous waste are subject to administrative regulation under 401 KAR Chapters 32 through 39, and the notification and permitting requirements of KRS 224.01-400, 224.40-310, 224.46-510, 224.46-580, and 224.50-130 to 224.50-413.

(41) "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(42) "Connector" means flanged, screwed, welded, or other joined fitting used to connect two (2) pipelines or a pipeline and a piece of equipment. For the purposes of reporting and recordkeeping, connector means flanged fittings that are not covered by insulation or other materials that prevent location of the fittings.

(43) "Consignee" means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste is sent.

(44) "Constituent" shall have the same meaning as "hazardous waste constituent."

(45) "Container" means any portable device in which hazardous waste is transported, stored, treated, or otherwise handled, and includes transport vehicles that are containers themselves (for example, tank trucks, tanker-trailers, and rail tank cars), and containers placed on or in a transport vehicle.

(46) "Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of 401 KAR 34:245 or 35:245.

(47) "Contaminate" means introduce a substance that would cause:

(a) The concentration of that substance in the groundwater to exceed the maximum contaminant level specified in 401 KAR 30:031, Sections 5 and 6 of 401 KAR 47:030, or Section 8 of 401 KAR 34:060;

(b) An increase in the concentration of that substance in the groundwater where the existing concentration of that substance exceeds the maximum contaminant level specified in 401 KAR 30:031, 401 KAR 47:030, or Section 8 of 401 KAR 34:060; or

(c) A significant increase above established background levels, for substances that do not have an established maximum contamination level.

(48) "Contamination" means the degradation of naturally occurring water, air, or soil quality either directly or indirectly as a result of human activities.

(49) "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in the event of a fire, explosion, or release of waste or waste constituents into the environment which has the potential for endangering human health and the environment. Financial planning to identify resources for initiation of such action is a part of contingency plan development.

(50) "Continuous recorder" means a data recording device recording an instantaneous data value at least once every 15 minutes.

(51) "Control device shutdown" means the cessation of operation of a control device for any purpose.

(52) "Control device" means an enclosed combustion device, vapor recovery system, or flare. Any device the primary function of which is the recovery or capture of solvents or other organics for use, reuse, or sale (for example, a primary condenser on a solvent recovery unit) is not a control device.

(53) "Corrective action management unit" or "CAMU" means an area within a facility that is designated by the cabinet under 401 KAR 34:287, for the purpose of implementing corrective action requirements under Section 12 of 401 KAR 34:060 and KRS 224.46-520. A CAMU shall only be used for the management of remediation wastes pursuant to implementing such corrective action requirements at the facility.

(54) "Cover" means a device or system which is placed on or

over a hazardous waste such that the entire hazardous waste surface area is enclosed and sealed to reduce air emissions to the atmosphere. A cover may have openings such as access hatches, sampling ports, and gauge wells that are necessary for operation, inspection, maintenance, or repair of the unit on which the cover is installed provided that each opening is closed and sealed when not in use. Examples of covers include a fixed roof installed on a tank, a floating membrane cover installed on a surface impoundment, a lid installed on a drum, and an enclosure in which an open container is placed during waste treatment.

(55) "Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(56) "Current closure and postclosure cost estimates" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:090 or Section 1(1), (2) and (3) of 401 KAR 35:090.

(57) "Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

(58) "Current plugging and abandonment cost estimates" as used in subsection (1) of this section refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer (see 40 CFR 144.70(f)).

(59) "Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 40 CFR 144.62(a), (b), and (c).

(60) "Current postclosure cost estimate" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:100 or Section 1(1), (2) and (3) of 401 KAR 35:100.

(61) "Debris" means solid material exceeding a 60mm particle size that is intended for disposal and that is: a manufactured object; plant or animal matter; or natural geologic material. However, the following materials are not debris: Any material for which a specific treatment standard is provided in 401 KAR 37:040, namely lead acid batteries, cadmium batteries, and radioactive lead soils; Process residuals such as smelter slag and residues from the treatment of waste, wastewater, sludges, or air emission residues; and Intact containers of hazardous waste that are not ruptured and that retain at least 75% of their original volume. A mixture of debris that has not been treated to the standards provided by Section 6 of 401 KAR 37:040 and other material is subject to regulation as debris if the mixture is comprised primarily of debris, by volume, based on visual inspection.

(62) "Designated facility" means a hazardous waste treatment, storage, or disposal facility which:

(a) Has received a hazardous waste site or facility permit (or a facility with interim status) in accordance with the requirements of 401 KAR Chapter 38;

(b) Has received a permit from a state authorized in accordance with 40 CFR Part 271, and EPA permit (or a facility with interim status) in accordance with 40 CFR Parts 270 and 124; or

(c) Is regulated under Section 6(3)(b) of 401 KAR 31:010 or 401 KAR Chapter 36, 40 CFR 261.6(c)(2) or 40 CFR Part 266, and that has been designated on the manifest by the generator pursuant to Section 1 of 401 KAR 32:020. If a waste is destined to a hazardous waste site or facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility shall be a facility allowed by the receiving state to accept that waste.

(63) "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in Section 4(1) and (3) of 401 KAR 43:020 and Section 4(1) and (3) of 401 KAR 43:030. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of

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universal waste.

(64) "Destruction or adverse modification" means an alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

(65) "Dike" means an embankment or ridge of either natural or manmade materials used to prevent the movement of liquids, sludges, solids, or other materials.

(66) "Direct transfer equipment" means any device (including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps) that is used to distribute, meter, or control the flow of hazardous waste between a container (for example, transport vehicle) and a boiler or industrial furnace.

(67) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

(68) "Disposal" shall have the meaning specified in KRS 224.01-010.

(69) "Distillate receiver" means a container or tank used to receive and collect liquid material (condensed) from the overhead condenser of a distillation unit and from which the condensed liquid is pumped to larger storage tanks or other process units.

(70) "Distillation operation" means an operation, either batch or continuous, separating one (1) or more feed stream(s) into two (2) or more exit streams, each exit stream having component concentrations different from those in the feed stream(s). The separation is achieved by the redistribution of the components between the liquid and vapor phase as they approach equilibrium within the distillation unit.

(71) "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(72) "Double block and bleed system" means two (2) block valves connected in series with a bleed valve or line that can vent the line between the two (2) block valves.

(73) "Draft permit" shall have the same meaning as "proposed permit".

(74) "Drip pad" means an engineered structure consisting of a curbed, free-draining base, constructed of nonearthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(75) "Effluent limitations" shall have the same meaning as KRS 224.01-010.

(76) "Elementary neutralization unit" means a device which:

(a) Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in Section 3 of 401 KAR 31:030, or they are listed in 401 KAR 31:040 only for this reason; and

(b) Meets the definition of tank, tank system, container, transport vehicle, or vessel in this section.

(77) "Emergency permit" means a permit issued by the cabinet to temporarily store, treat or dispose of hazardous waste in accordance with the provisions of Section 2 of 401 KAR 38:060, to temporarily manage, process, or dispose of a solid waste in accordance with the provisions of Section 2 of 401 KAR 47:150 or to temporarily store, treat, or dispose of special waste in accordance with the provisions of Section 1 of 401 KAR 45:135.

(78) "Endangered or threatened species" means any species listed as such pursuant to Section 4 of the Endangered Species Act, as amended, 16 USC 1536.

(79) "Engineer" shall have the meaning specified in KRS 322.010. An independent, professional engineer shall be registered in Kentucky pursuant to KRS 322.040 and shall be qualified to engage in waste management engineering practices.

(80) "EPA acknowledgment of consent" means the cable sent to EPA from the U.S. Embassy in a receiving country that acknowledges

the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

(81) "EPA hazardous waste number" means the number assigned by EPA and the cabinet to each hazardous waste listed in 401 KAR 31:040, and to each characteristic identified in 401 KAR 31:030.

(82) "EPA identification number" means the number assigned by EPA or the cabinet to each generator; transporter; or treatment, storage, or disposal facility.

(83) "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice and which has a channel bottom that is always above the local water table.

(84) "Equipment" means each valve, pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, or flange, and any control devices or systems required by this administrative regulation.

(85) "Equivalent method" means any testing or analytical method, approved jointly by the administrator and the secretary under 401 KAR Chapter 31, or methods in 401 KAR Chapters 47 and 48, approved by the secretary of the cabinet.

(86) "Existing" indicates a boiler or industrial furnace that on or before August 21, 1991 is either in operation burning, or processing hazardous waste or for which construction (including the ancillary facilities to burn or to process the hazardous waste) has commenced.

(87) "Existing component" shall have the same meaning as "existing tank system".

(88) "Existing facility" shall have the same meaning as "existing hazardous waste site or facility".

(89) "Existing hazardous waste site or facility" means a hazardous waste facility which was in operation, or for which continuous construction had commenced, on or before November 19, 1980. A facility has commenced construction if:

(a) The owner or operator had obtained the federal, state and local approvals or permits necessary to begin physical construction; and

(b) Either:

1. A continuous on-site, physical construction program has begun; or

2. The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the facility to be completed within a reasonable time.

(90) "Existing portion" means that land surface area of an existing hazardous waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

(91) "Existing tank system" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(a) A continuous on-site physical construction or installation program has begun; or

(b) The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the site or installation of the tank system to be completed within a reasonable time.

(92) "External floating roof" means a pontoon or double-deck type floating roof that rests on the surface of a hazardous waste being managed in a tank that has no fixed roof.

(93) "Face amount" means the total amount the insurer is obligated to pay under the policy.

(94) "Facility" means:

(a) All contiguous land, and structures, other appurtenances, and

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improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).

(b) For the purpose of implementing corrective action under Section 12 of 401 KAR 34:060, all contiguous property under the control of the owner or operator seeking a hazardous waste permit. This definition also applies to facilities implementing corrective action under KRS 224.46-520.

(95) "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation, and the United States Government Printing Office.

(96) "Federal, state, and local approvals or permits necessary to begin physical construction" means permits and approvals required under federal, state, or local hazardous waste control statutes, administrative regulations, or ordinances.

(97) "Final closure" of a hazardous waste site or facility means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under 401 KAR Chapters 34 and 35 are no longer conducted at the facility unless subject to the provisions in Section 5 of 401 KAR 32:030.

(98) "First attempt at repair" means to take rapid action for the purpose of stopping or reducing leakage of organic material to the atmosphere using best practices.

(99) "Fiscal year" means a twelve (12) month period for accounting and other financial purposes.

(100) "Fixed roof" means a rigid cover that is installed in a stationary position so that it does not move with fluctuations in the level of the hazardous waste placed in a tank.

(101) "Flame zone" means the portion of the combustion chamber in a boiler occupied by the flame envelope.

(102) "Floating membrane cover" means a cover consisting of a synthetic flexible membrane material that rests upon and is supported by the hazardous waste being managed in a surface impoundment.

(103) "Floating roof" means a pontoon-type or double-deck type cover that rests upon and is supported by the hazardous waste being managed in a tank, and is equipped with a closure seal or seals to close the space between the cover edge and the tank wall.

(104) "Flood plain" means areas adjoining inland waters which are inundated by the base flood, unless otherwise specified in 401 KAR 30:031 or 401 KAR 47:030, and includes: 100-year floodplain and floodway.

(105) "Floodway" means the channel of the waterway, stream or river and that portion of the adjoining floodplain which provides for passage of the 100-year flood flow without increasing the floodwater depth across the 100-year floodplain by more than one (1) foot.

(106) "Flow indicator" means a device that indicates whether gas flow is present in a vent stream.

(107) "Food chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(108) "Fractionation operation" means a distillation operation or method used to separate a mixture of several volatile components of different boiling points in successive stages, each stage removing from the mixture some proportion of one of the components.

(109) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(110) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.

(111) "Generator" shall have the meaning specified in KRS 224.01-010.

(112) "Governing body" shall have the same meaning as KRS 224.01-010.

(113) "Groundwater table" means the upper boundary of the

saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.

(114) "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table, and perched water zones below the B-soil horizon, including water circulating through fractures, bedding planes, and solution conduits.

(115) "Halogenated organic compounds" or "HOCs" means those compounds having a carbon-halogen bond that are listed under 401 KAR 37:110.

(116) "Hazardous constituent" shall have the meaning specified in KRS 224.01.010.

(117) "Hazardous waste constituent" means a constituent which caused the cabinet to list the hazardous waste in 401 KAR 31:040, or a constituent listed in Section 5(3) of 401 KAR 31:030.

(118) "Hazardous waste management unit shutdown" means a work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit. An unscheduled work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit for less than twenty-four (24) hours is not a hazardous waste management unit shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping operation are not hazardous waste management unit shutdowns.

(119) "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed. Hazardous waste management units include: aboveground tank; component; existing tank system or existing component; in-ground tank; new tank system or new tank component; on-ground tank; tank system; underground tank; or unfit-for-use tank system.

(120) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

(121) "Hazardous waste site or facility" means any place at which hazardous waste is treated, stored, or disposed of by landfilling, incineration, or any other method. Hazardous waste site or facility includes: boiler; disposal facility; elementary neutralization unit; incinerator; industrial furnace; hazardous waste transfer facility; injection well; landfill; land treatment facility; miscellaneous unit; pile or waste pile; replacement unit; storage facility; sludge dryer; surface impoundment; tank; thermal treatment facility; totally enclosed treatment facility; treatment facility; or wastewater treatment unit.

(122) "Hazardous waste transfer facility" means any transportation related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

(123) "Hazardous waste" shall have the meaning specified in KRS 224.01-010.

(124) "Holocene" means the most recent epoch of the quaternary period, extending from the end of the pleistocene to the present.

(125) "Hot well" means a container for collecting condensate as in a steam condenser serving a vacuum-jet or steam-jet ejector.

(126) "Household waste" means any waste material (including garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

(127) "In existence" shall have the same meaning as "existing."

(128) "In gas service" means that the piece of equipment contains or contacts a hazardous waste stream that is in the gaseous state at

operating conditions.

(129) "In heavy liquid service" means that the piece of equipment is not in gas service or in vapor service or in light liquid service.

(130) "In light liquid service" means that the piece of equipment contains or contacts a waste stream where the vapor pressure of one (1) or more of the components in the stream is greater than three-tenths (0.3) kilopascals (kPa) at twenty (20) degrees Centigrade, the total concentration of the pure components having a vapor pressure greater than three-tenths (0.3) kPa at twenty (20) degrees Centigrade is equal to or greater than twenty (20) percent by weight, and the fluid is a liquid at operating conditions.

(131) "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

(132) "In situ sampling systems" means nonextractive samplers or in-line samplers.

(133) "In vacuum service" means that equipment is operating at an internal pressure that is at least 5 kPa below ambient pressure.

(134) "In vapor service" shall have the same meaning as "in gas service."

(135) "In-ground tank" means a device meeting the definition of "tank" in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(136) "Inactive portion" means that portion of a hazardous waste site or facility which was not operated after November 19, 1980.

(137) "Incinerator" means any enclosed device that:

(a) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(b) Meets the definition of infrared incinerator or plasma arc incinerator.

(138) "Incompatible waste" means a hazardous waste which is unsuitable for placement in a particular device or facility because it may cause corrosion or decay of containment materials, or unsuitable for commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(139) "Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

(140) "Individual generation site" means the contiguous site at or on which one (1) or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one (1) or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

(141) "Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

(a) Cement kilns;

(b) Lime kilns;

(c) Aggregate kilns;

(d) Phosphate kilns;

(e) Coke ovens;

(f) Blast furnaces;

(g) Smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);

(h) Titanium dioxide chloride process oxidation reactors;

(i) Methane reforming furnaces;

(j) Pulp liquor recovery furnaces;

(k) Combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(l) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production

facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least three (3) percent, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of twenty (20) percent as generated; or

(m) Other devices as the cabinet may, after notice and comment, add to this list on the basis of criteria and Section 5 of 401 KAR 30:080.

(142) "Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(143) "Injection well" means a well into which fluids are injected to achieve subsurface emplacement.

(144) "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained hazardous waste or reagents used to treat the hazardous waste.

(145) "Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of a hazardous waste management unit including tank systems.

(146) "Interim status" means the designation of a hazardous waste site or facility which was in existence on November 19, 1980, and has submitted a Part A application under 401 KAR Chapter 38 or under 40 CFR Part 270 and is treated as having a permit until final administrative disposition of the application is made.

(147) "Intermittent stream" means a stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year.

(148) "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

(149) "Internal floating roof" means a floating roof that rests or floats on the surface (but not necessarily in complete contact with it) of a hazardous waste being managed in a tank that has a fixed roof.

(150) "IUC well" means a underground injection control well as provided in 40 CFR Part 144.

(151) "Karst terrain" means a type of topography where limestone, dolomite or gypsum is present and is characterized by naturally occurring closed topographic depressions or sinkholes, caves, disrupted surface drainage, and well developed underground solution channels formed by dissolution of these rocks by water moving underground.

(152) "Key personnel" shall have the meaning specified in KRS 224.01-010.

(153) "Lab pack" means any large container equal to or smaller than fifty-five (55) gallons that holds many smaller containers of various content tightly secured with packing material.

(154) "Lamp" means the bulb or tube portion of a lighting device specifically designed to produce radiant energy, most often in the ultraviolet (UV), visible, and infra-red (IR) regions of the electromagnetic spectrum. Examples of common lamps include, but is not limited to, incandescent, fluorescent, high pressure sodium, mercury vapor, metal halide, high intensity discharge, and neon lamps.

(155) "Land disposal" shall have the meaning specified in KRS 224.01-010.

(156) "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface. These facilities are disposal facilities if the waste will remain after closure.

(157) "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

(158) "Landfill" means a disposal facility or part of a facility where

hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(159) "Large quantity handler of universal waste" means a universal waste handler who accumulates 5,000 kilograms or more total universal waste (batteries, lamps, pesticides, or thermostats, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total of universal waste is accumulated.

(160) "Leachate" means any liquid including any suspended components in the liquid, that has percolated through or drained from waste.

(161) "Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment system or the presence of a release of hazardous waste, hazardous waste constituents or accumulated liquid in the secondary containment system. Such a system shall employ operational controls (daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment system or the presence of a release of hazardous waste constituents or accumulated liquids into the secondary containment system.

(162) "Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

(163) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(164) "Liner" means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, ground water, or surface water at any time during the active life of the facility.

(165) "Liquid-mounted seal" means a foam or liquid-filled primary seal mounted in contact with the hazardous waste between the tank wall and the floating roof continuously around the circumference of the tank.

(166) "Local government" means the fiscal court of the county, urban-county government, or governing body of an incorporated municipality wherein a hazardous waste landfill or other site or facility for the land disposal of hazardous waste is proposed.

(167) "Major modification" means for hazardous waste sites or facilities, a change in ownership where the cabinet determines that other changes in the permit are necessary as a result of the change in ownership or operational control, area occupied, disposal method, or other significant change in the operation of a waste site or facility (Note: Minor modifications are described in Section 3 of 401 KAR 38:040).

(168) "Malfunction" means any sudden failure of a control device or a hazardous waste management unit or failure of a hazardous waste management unit to operate in a normal or usual manner, so that organic emissions are increased.

(169) "Manifest document number" means the EPA twelve (12) digit identification number assigned to the generator plus a unique, serially increasing, five (5) digit document number assigned to the manifest by the generator for recordkeeping and reporting purposes.

(170) "Manifest" shall have the meaning specified in KRS 224.01-010.

(171) "Maximum organic vapor pressure" means the equilibrium partial pressure exerted by the hazardous waste contained in a tank determined at the temperature equal to either: (1) the local maximum monthly average temperature as reported by the National Weather

Service when the hazardous waste is stored or treated at ambient temperature; or (2) the highest calendar-month average temperature of the hazardous waste when the hazardous waste is stored at temperatures above the ambient temperature or when the hazardous waste is stored or treated at temperatures below the ambient temperature.

(172) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

(173) "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of, and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR Part 146, containment building, corrective action management unit, or unit eligible for a research, development, and demonstration permit under Section 6 of 401 KAR 38:060.

(174) "Monitoring well" means a well used to obtain water samples for water quality and quantity analysis and groundwater levels.

(175) "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.

(176) "Movement" means that hazardous waste transported to a facility in an individual vehicle.

(177) "Net working capital" means current assets minus current liabilities.

(178) "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

(179) "New tank component" shall have the same meaning as "new tank system."

(180) "New tank system" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation commenced after July 14, 1986; however, for purposes of Section 4(7)(b) of 401 KAR 34:190 and Section 4(7)(b) of 401 KAR 35:190, a new tank system is one for which construction commenced after July 14, 1986.

(181) "New" means any hazardous waste site or facility that commenced construction after November 19, 1980.

(182) "No detectable organic emissions" means no escape of organics from a device or system to the atmosphere as determined by an instrument reading less than 500 parts per million by volume (ppmv) above the background level at each joint, fitting, and seal when measured in accordance with the requirements of Method 21 in 40 CFR part 60, appendix A, and by no visible openings or defects in the device or system such as rips, tears, or gaps.

(183) "Nonsudden accidental occurrence" means an occurrence that takes place over time and involves continuous or repeated exposure.

(184) "Nonwastewaters" means wastes that do not meet the criteria for wastewaters found in the definition for wastewaters.

(185) "Not detected" means at or below the lower method calibration limit (MCL) in SW-846, Method 8290, Table 1.

(186) "Off-site" means properties noncontiguous to the site.

(187) "On-site" means on the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing, as opposed to going along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access is also considered on-site property.

(188) "Onground tank" means a devise meeting the definition of tank that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(189) "Open burning" means the combustion of any material or solid waste without:

(a) Control of combustion air to maintain adequate temperature for efficient combustion;

(b) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(c) Control of emission of the gaseous combustion products.

(190) "Open-ended valve or line" means any valve, except pressure relief valves, having one (1) side of the valve seat in contact with process fluid and one (1) side open to the atmosphere, either directly or through open piping.

(191) "Operational plan" means the approved plan of operations filed with the cabinet which describes the method of operation that the permittee will use in the treatment, storage, or disposal of wastes.

(192) "Operator" means any person responsible for overall operation of an on-site or off-site waste facility, including any private contractor conducting operational activities at a federal facility.

(193) "Other site or facility for the land disposal of hazardous waste" means a disposal facility but shall not include a storage facility or a treatment facility.

(194) "Owner" means any person who owns an on-site or off-site waste facility, or any part of a facility.

(195) "Parent corporation" means a corporation which directly owns at least fifty (50) percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

(196) "Part A of the application" or "Part A" means the standard forms or format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:080.

(197) "Part B of the application" or "Part B" means the standard format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:090 to 401 KAR 38:210.

(198) "Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of 401 KAR Chapters 34 and 35 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

(199) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface run-off. The term does not include "intermittent stream" or "ephemeral stream".

(200) "Permit by rule" means authorization allowing certain classes of sites or facilities to manage waste consistent with 401 KAR Chapters 30 to 49, without submission of a registration or permit application to the cabinet. Examples of hazardous waste sites or facilities which are permitted by rule include facilities operating under an interim status permit and facilities identified in Section 1 of 401 KAR 38:060.

(201) "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management administrative regulations. The term permit includes permit-by-rule, registered permit-by-rule, research, development, and demonstration permit, and emergency permit. However, the term permit does not include draft permit or proposed permit.

(202) "Permittee" means any person holding a valid permit issued by the cabinet to manage, treat, store, or dispose of waste.

(203) "Person" shall have the meaning specified in KRS 224.01-010.

(204) "Personnel" or "facility personnel" means all persons who work at or oversee the operations of a waste facility, and whose actions or failure to act may result in noncompliance with the requirements of the waste management administrative regulations.

(205) "Pesticide" means any substance or mixture of substances

intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(a) Is a new animal drug under FFDCA section 201(w), or

(b) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or

(c) Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by paragraph (a) or (b) of this subsection.

(206) "Pile" or "waste pile" means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

(207) "Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame and which is not listed as an industrial furnace.

(208) "Point of compliance" means for solid waste site and facilities, groundwater monitoring wells located within 250 feet of the waste boundary as approved by the cabinet.

(209) "Point of waste origination" means as follows:

(a) When the facility owner or operator is the generator of the hazardous waste, the point of waste origination means the point where a solid waste produced by a system, process, or waste management unit is determined to be a hazardous waste as defined in 40 CFR part 261.

(b) When the facility owner and operator are not the generator of the hazardous waste, point of waste origination means the point where the owner or operator accepts delivery or takes possession of the hazardous waste.

(210) "Point of waste treatment" means the point where a hazardous waste exits a waste management unit used to destroy, degrade, or remove organics in the hazardous waste.

(211) "Point source" means any discernible, confined, and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(212) "Pollutant" shall have the same meaning as KRS 224.01-010.

(213) "Polychlorinated biphenyls" or "PCB" means halogenated organic compounds defined in accordance with 40 CFR 761.2 as of July 1989.

(214) "Postclosure care" means the manner in which a facility shall be maintained when it no longer accepts waste for disposal.

(215) "Postclosure monitoring and maintenance" shall have the meaning specified in KRS 224.01-010.

(216) "Postclosure plan" means the plan for postclosure care prepared in accordance with the requirements of Sections 8 to 11 of 401 KAR 34:070 or Sections 8 to 11 of 401 KAR 35:070.

(217) "Pressure release" means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device.

(218) "Primary exporter" means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with Section 1 of 401 KAR 32:020 which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

(219) "Process heater" means a device that transfers heat liberated by burning fuel to fluids contained in tubes, including all fluids except water that are heated to produce steam.

(220) "Process vent" means any open-ended pipe or stack that is vented to the atmosphere either directly, through a vacuum-producing system, or through a tank (distillate receiver, condenser, bottoms receiver, surge control tank, separator tank, or hot well)

associated with hazardous waste distillation fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations.

(221) "Property damage" shall have the meaning given by applicable Kentucky statutes. Property damage does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for property damage.

(222) "Proposed permit" means a document prepared by the cabinet indicating the cabinet's tentative decision to issue or deny, modify, revoke or terminate a permit.

(223) "Publicly owned treatment works" or "POTW" shall have the meaning specified in KRS 224.01-010.

(224) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump.

(225) "Qualified groundwater scientist" means a geologist registered in Kentucky who has received a baccalaureate or postgraduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields to enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

(226) "Receiving country" means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal (except short-term storage incidental to transportation).

(227) "Recharge zone" means an area supplying the water which enters an underground drinking water source.

(228) "Reclaimed" means a material that is processed to recover a usable product, or that is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents.

(229) "Recovered material" shall have the meaning specified in KRS 224.01-010.

(230) "Recyclable materials" means hazardous wastes that are recycled.

(231) "Recycled" means a material that is used, reused, or reclaimed.

(232) "Recycling" shall have the meaning specified in KRS 224.01-010.

(233) "Regional integrated waste treatment and disposal demonstration facility" shall have the meaning specified in KRS 224.01-010.

(234) "Regulated unit" means hazardous waste land disposal sites or facilities, or portions of existing hazardous waste land disposal sites or facilities that continued to receive waste after January 26, 1983.

(235) "Remediation waste" means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under Section 12 of 401 KAR 34:060 and KRS 224.46-520. For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing KRS 224.46-520 for releases beyond the facility boundary.

(236) "Repaired" means that equipment is adjusted, or otherwise altered, to eliminate a leak.

(237) "Replacement unit" means a landfill, surface impoundment, or waste pile unit from which all or substantially all of the waste is removed, and that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or approved corrective action.

(238) "Representative sample" means a sample of a universe or whole (for example, waste pile, lagoon, or groundwater) which can be expected to exhibit the average properties of the universe or whole.

(239) "Research, development, and demonstration permit" mean a permit issued by the cabinet for a hazardous waste treatment

facility that utilizes an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under 401 KAR Chapters 34 through 36.

(240) "Resource recovery" means the recovery of material or energy from waste.

(241) "Run-off" means any rainwater, leachate, or other liquid that drains overland from any part of a facility.

(242) "Run-on" means any rainwater, leachate, or other liquid that drains overland onto any part of a facility.

(243) "Saturated zone" shall have the same meaning as "zone of saturation".

(244) "Schedule of compliance" means a schedule of remedial measures included in a permit or cabinet order, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with KRS Chapter 224 and 401 KAR Chapters 30 to 49.

(245) "Scrap metal" is bits and pieces of metal parts (for example, bars, turnings, rods, sheets, or wire) or metal pieces that may be combined together with bolts or soldering (for example, radiators, scrap automobiles, or railroad boxcars), which when worn or superfluous can be recycled.

(246) "Secretary" shall have the meaning specified in KRS 224.01-010.

(247) "Sensor" means a device that measures a physical quantity or the change in a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

(248) "Separator tank" means a device used for separation of two immiscible liquids.

(249) "Sewage system" shall have the meaning specified in KRS 224.01-010.

(250) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the waste facility or activity.

(251) "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 BTU per pound of sludge treated on a wet-weight basis.

(252) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.

(253) "Small quantity generator" means a generator who generates more than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month.

(254) "Small quantity handler of universal waste" means a universal waste handler who does not accumulate more than 5,000 kilograms of universal waste (batteries, lamps, pesticides, or thermostats, collected collectively) at any time.

(255) "Solid waste management unit" shall mean any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at a facility at which solid wastes have been routinely and systematically released.

(256) "Solvent extraction operation" means an operation or method of separation in which a solid or solution is contacted with a liquid solvent (the two (2) being mutually insoluble) to preferentially dissolve and transfer one (1) or more components into the solvent.

(257) "Sorb" means to either adsorb, absorb, or both.

(258) "Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both.

(259) "Spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

(260) "Spill" means any accidental spilling, leaking, pumping, pouring, emitting, or dumping of hazardous wastes or materials which,

when spilled, become hazardous wastes into or on any land or water.

(261) "Start-up" means the setting in operation of a hazardous waste management unit or control device for any purpose.

(262) "State" means any of the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands or Guam but does not include any foreign country.

(263) "Steam stripping operation" means a distillation operation in which vaporization of a volatile constituents of a liquid mixture takes place by the introduction of steam directly into the charge.

(264) "Storage facility" means a facility or part of a facility at which hazardous waste is held for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere. A generator who accumulates his own hazardous wastes in an approved manner for less than ninety (90) days for subsequent transport on site or off site is not operating or maintaining a storage facility.

(265) "Storage of hazardous waste" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed, or stored elsewhere.

(266) "Storage" shall have the meaning specified in KRS 224.01-010.

(267) "Substantial business relationship" means the extent of a business relationship necessary to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" shall arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the cabinet.

(268) "Sudden accidental occurrence" means an occurrence which is not continuous or repeated in nature.

(269) "Sump" means any pit or reservoir that meets the definition of tank, and those troughs and trenches connected to it, that serves to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile administrative regulations, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(270) "Surface impoundment" means a facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(271) "Surge control tank" means a large-sized pipe or storage reservoir sufficient to contain the surging liquid discharge of the process tank to which it is connected.

(272) "Tangible net worth" means the tangible assets that remain after deducting liabilities; these assets would not include intangibles such as goodwill and rights to patents or royalties.

(273) "Tank" means a stationary device designed to contain an accumulation of hazardous waste that is constructed primarily of nonearthen materials (for example, wood, concrete, steel, or plastic) which provide structural support and which does not meet the definition of any other unit.

(274) "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

(275) "Termination" shall have the meaning specified in KRS 224.01-010.

(276) "The full amount of the liability coverage to be provided" means the amount of coverage for sudden and nonsudden occurrences required to be provided by the owner or operator, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate

financial assurance by the owner or operator.

(277) "Thermal treatment facility" means a facility or part of a facility which uses elevated temperatures as the primary means to change the chemical, physical or biological character or composition of hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge.

(278) "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge (see also "incinerator" and "open burning").

(279) "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of Section 4(3)(b) of 401 KAR 43:020 or Section 4(3)(b) of 401 KAR 43:030.

(280) "Thin-film evaporation operation" means a distillation operation that employs a heating surface consisting of a large diameter tube that may be either straight or tapered, horizontal or vertical. Liquid is spread on the tube wall by a rotating assembly of blades that maintain a close clearance from the wall or actually ride on the film of liquid on the wall.

(281) "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which acid is neutralized.

(282) "Transit country" means any foreign country, other than a receiving country, through which a hazardous waste is transported.

(283) "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body is a separate transport vehicle.

(284) "Transportation" shall have the meaning specified in KRS 224.01-010.

(285) "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway or water.

(286) "Treatability study" means:

(a) A study in which a hazardous waste is subjected to a treatment process to determine:

1. Whether the waste is amenable to the treatment process;
2. What pretreatment, if any, is required;
3. The optimal process conditions needed to achieve the desired treatment;
4. The efficiency of a treatment process for a specific waste or wastes; or
5. The characteristics and volumes of residuals from a particular treatment process.

(b) For the purpose of 401 KAR 31:010, Section 4(5) and (6), exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies.

(c) A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

(287) "Treatment facility" means a facility or part of a facility using any method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste nonhazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

(288) "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are

degraded, transformed, or immobilized.

(289) "Treatment" shall have the meaning specified in KRS 224.01-010.

(290) "Underground drinking water source" means:

(a) An aquifer supplying drinking water for human consumption; or

(b) An aquifer in which the groundwater contains less than 10,000 mg/l total dissolved solids.

(291) "Underground injection" means the subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well".)

(292) "Underground tank" means a device meeting the definition of "tank" in this section whose entire surface area is totally below the surface of and covered by the ground.

(293) "Underlying hazardous constituent" means any constituent listed in Section 1 of 401 KAR 37:040, Table - Treatment Standards for Hazardous Wastes, except vanadium and zinc, which can reasonably be expected to be present at the point of generation of the hazardous waste, at a concentration above the constituent-specific treatment standards.

(294) "Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

(295) "Universal waste" means any of the following hazardous wastes that are subject to the universal waste requirements of 401 KAR Chapter 43:

(a) Batteries as described in Section 2 of 401 KAR 43:010;

(b) Pesticides as described in Section 3 of 401 KAR 43:010;

(c) Thermostats as described in Section 4 of 401 KAR 43:010; and

(d) Spent Lamps as described in Section 5 of 401 KAR 43:010.

(296) "Universal waste handler":

(a) Means:

(1) A generator of universal waste; or

(2) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(b) Does not mean:

(1) A person who treats (except under the provisions of Sections 4(1) or (3) of 401 KAR 43:020 or Sections 4(1) or (3) of 401 KAR 43:030), disposes of, or recycles universal waste; or

(2) A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

(297) "Universal waste transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.

(298) "Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

(299) "Unsaturated zone" shall have the same meaning as "Zone of aeration".

(300) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(301) "Used oil" shall have the same meaning as KRS 224.50-545.

(302) "Used or reused" means a material that is either:

(a) Employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one (1) process used as feedstock in another process).

However, a material shall not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

(b) Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

(303) "Vapor incinerator" means any enclosed combustion device that is used for destroying organic compounds and does not extract energy in the form of steam or process heat.

(304) "Vapor recovery system" means that equipment, device, or apparatus capable of collecting vapors and gases discharged from a storage tank, and a vapor processing system capable of affecting such vapors and gases so as to prevent their emission into the atmosphere.

(305) "Vapor-mounted seal" means a foam-filled primary seal mounted continuously around the circumference of the tank so that there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the hazardous waste surface, and the floating roof.

(306) "Vented" means discharged through an opening, typically an open-ended pipe or stack, allowing the passage of a stream of liquids, gases, or fumes into the atmosphere. The passage of liquids, gases, or fumes is caused by mechanical means such as compressors or vacuum-producing systems or by process-related means such as evaporation produced by heating and not caused by tank loading and unloading (work losses) or by natural means such as diurnal temperature changes.

(307) "Vessel" means any watercraft used or capable of being used as a means of transportation on the water.

(308) "Volatile organic concentration" or "VO concentration" means the fraction by weight of organic compounds in a hazardous waste expressed in terms of parts per million (ppmw) as determined by direct measurement using Method 25D or by knowledge of the waste in accordance with the requirements of Section 4 of 401 KAR 35:040.

(309) "Washout" means the carrying away of waste by waters as a result of flooding.

(310) "Waste boundary" means the outermost perimeter of the waste (projected in the horizontal plane) as it would exist at completion of the disposal activity.

(311) "Waste determination" means performing all applicable procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine whether a hazardous waste meets standards specified in 401 KAR Chapter 35. Examples of a waste determination include performing the procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine the average VO concentration of a hazardous waste at the point of waste origination; the average VO concentration of a hazardous waste at the point of waste treatment and comparing the results to the exit concentration limit specified for the process used to treat the hazardous waste; determining the organic reduction efficiency and the organic biodegradation efficiency for a biological process used to treat a hazardous waste and comparing the results to the applicable standards; or the maximum volatile organic vapor pressure for a hazardous waste in a tank and comparing the results to the applicable standards.

(312) "Waste pile" shall have the same meaning as "pile".

(313) "Waste stabilization process" means any physical or chemical process used to either reduce the mobility of hazardous constituents in a hazardous waste or eliminate free liquids as determined by Test Method 9095 (Paint Filter Liquids Test) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW-846, Third Edition, September 1986, as amended by Update I, November 15, 1992 (incorporated by reference-refer to § 260.11 of this chapter). A waste stabilization process

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includes mixing the hazardous waste with binders or other materials, and curing the resulting hazardous waste and binder mixture. Other synonymous terms used to refer to this process are "waste fixation" or "waste solidification."

(314) "Waste" shall have the meaning specified in KRS 224.01-010.

(315) "Wastewaters" means wastes that contain less than one (1) percent by weight total organic carbon (TOC) and less than one (1) percent by weight total suspended solids (TSS), with the following exceptions:

(a) F001, F002, F003, F004, F005, wastewaters are solvent-water mixtures that contain less than one (1) percent by weight TOC or less than one (1) percent by weight total F001, F002, F003, F004, F005 solvent constituents listed in Section 1 of 401 KAR 37:040 in Table Treatment Standards for Hazardous Waste;

(b) K011, K013, K014 wastewaters contain less than five (5) percent by weight TOC and less than one (1) percent by weight TSS, as generated; and

(c) K103 and K104 wastewaters contain less than four (4) percent by weight TOC and less than one (1) percent by weight TSS.

(316) "Wastewater treatment unit" means a device that:

(a) Is part of a wastewater treatment facility that is subject to administrative regulation under either section 402 or 307(b) of the CWA;

(b) Receives and treats or stores an influent wastewater which is a hazardous waste as defined in 401 KAR 31:010, Section 3; or generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in 401 KAR 31:010, Section 3; or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Section 3 of 401 KAR 31:010; and

(c) Meets the definition of tank or tank system in this administrative regulation.

(317) "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

(318) "Water" or "waters of the Commonwealth" shall have the meaning specified in KRS 224.01-010.

(319) "Well" means any shaft or pit dug or bored into the earth, generally of cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(320) "Wetlands" means land that has a predominance of hydric soils and is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(321) "Zone of aeration" means that region of the soil or rock between the land surface and the nearest saturated zone in which the interstices are occupied partially by air.

(322) "Zone of engineering control" means an area under the control of the owner or operator that upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to waters of the Commonwealth.

(323) "Zone of saturation" means that part of the earth's crust containing groundwater in which all voids, large and small, are filled with liquid.

Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by context, acronyms and abbreviations used in 401 KAR Chapter 32 shall have the meaning as identified in Table 1 of this administrative regulation.

Table 1. Acronyms and Abbreviations.

Am.	Amended
C	Corrosive waste
CAA	Clean Air Act, as amended

CFR	Code of Federal Regulations
cm	Centimeter
cm ²	Centimeter squared
CO	Carbon monoxide
CO ₂	Carbon dioxide
CWA	Clean Water Act, as amended
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980
DOT	United States Department of Transportation
DRE	Destruction and removal efficiency
E	Explosive waste
eff.	Effective
EPA	United States Environmental Protection Agency
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act
FIA	Federal Insurance Administration
FR	Federal Register
H	Acutely hazardous waste
ha	Hectare
HTMR	High temperature metals recovery
HSWA	Hazardous and Solid Waste Amendments of 1994
I	Ignitable waste
KAR	Kentucky Administrative Regulation
kg	Kilogram
KPDES	Kentucky Pollution Discharge Elimination System
KRS	Kentucky Revised Statute
Ky.R.	Administrative Register of Kentucky
L	Liter
LC	Lethal concentration
LD	Lethal dose
ml	Milliliter
mm	Millimeter
N	Normal
NESHAPS	National Emissions Standards for Hazardous Air Pollutants
NPDES	National Pollutant and Discharge Elimination System
PCB	Polychlorinated biphenyl
pCi/l	Picocuries per liter
PHC	Principal hazardous constituent
Permit POHC	Permitted principal organic hazardous constituent
PM	Particulate matter
POHC	Principal organic hazardous constituent
ppm	parts per million
Trial POHC	Trial burn principal organic hazardous constituent
POTW	Publicly owned treatment works
PSD	Prevention of significant deterioration
psi	Pounds per square inch
psig	Pounds per square inch gauge
R	Reactive waste
RCRA	Resource Conservation and Recovery Act, as amended
SDWA	Safe Drinking Water Act, as amended
SEC	Securities and Exchange Commission
SIC	Standard Industrial Classification Code
SPCC	Spill Prevention, Control, and Countermeasures Plan
T	Toxic waste
UIC	Underground Injection Control
UICP	Underground Injection Control Program
USC	United States Code
U.S. EPA	United States Environmental Protection Agency
USGS	United States Geological Survey

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USPS

United States Postal Service

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: This regulation does not affect any entities, because it only defines terms used in the chapter. The regulation was promulgated to comply with KRS 13A.222.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The cabinet will experience no additional costs or

savings by promulgating the amendments to this regulation.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: There will be no additional factors affecting costs.

b. Reporting and paperwork requirements: There will be no extra paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on the state and local revenue with the promulgation of this regulation.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No costs are imposed with the promulgation of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: There were no other alternatives that would achieve compliance with KRS 13A.222.

8. Assessment of expected benefits of the administrative regulation: The benefit is having the definitions clearly stated at the beginning of each chapter.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Not applicable since no requirements are imposed.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of hazardous waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments establish definitions of hazardous waste terms and the clarification of certain definitions. This regulation is necessary to maintain consistency between state and federal programs. In addition, the regulation has been modified to reflect regulation construction specified in KRS 13A.222.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or

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additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that manages hazardous waste.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. This administrative regulation establishes definitions for all terms within 401 KAR Chapter 32. These terms are assimilated from existing federal regulatory definitions and existing statutory definitions where applicable.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): Because this administrative regulation only establishes definitions for 401 KAR Chapter 32, this administrative regulation will not affect state, county, or local expenditures.

Other Explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (New Administrative Regulation)

401 KAR 33:005. Definitions related to 401 KAR Chapter 33.

RELATES TO: KRS 224.01, 224.10, 224.46, 40 CFR 260.10

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.46-510 requires the cabinet to promulgate administrative regulations establishing standards applicable to transporters of hazardous waste regarding recordkeeping and compliance with a manifest system. The chapter establishes standards for transporters of hazardous waste. This administrative regulation defines essential terms that are used in this chapter.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or otherwise specifically indicated by context, terms in 401 KAR Chapter 33 shall have the meanings given in this Section.

(1) "100-year floodplain" means any land area which is subject to a one (1) percent or greater chance of flooding in any given year from any source.

(2) "100-year flood" means a flood that has a one (1) percent chance of being equaled or exceeded in any given year.

(3) "Aboveground tank" means a device meeting the definition of "tank" and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

(4) "Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

(5) "Accumulated speculatively" means that a material is accumulated before being recycled.

(a) A material is not accumulated speculatively, if the person accumulating it can show:

1. That the material is potentially recyclable and has a feasible means of being recycled; and

2. That - during the calendar year (commencing on January 1) - the amount of material that is recycled, or transferred to a different site for recycling, equals at least seventy-five (75) percent by weight or volume of the amount of that material accumulated at the beginning of the calendar year (including any material accumulated from previous years).

(b) In calculating the percentage of turnover, the seventy-five (75) percent requirement is to be applied to each material of the same type that is recycled in the same way. Materials accumulating in units that would be exempt from administrative regulation under Section 4(3) of 401 KAR 31:010 are not to be included in making the calculation. (Materials that are already defined as wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling.

(6) "Active fault" means a land area which, according to the weight of geological evidence, has a reasonable probability of being affected by movement along a fault to the extent that a waste site or facility would be damaged and thereby pose a threat to human health and the environment.

(7) "Active life" of a facility means the period from the initial receipt of waste at a waste site or facility until the cabinet receives certification of final closure.

(8) "Active portion" means any area of a facility where treatment, storage, or disposal operations are being or have been conducted and which have not been closed. It includes the treated area of a landfarm and the active face of a landfill. Covered, closed, or inactive portions of landfills, building roofs, and roads are excluded unless designated as "active portions" by the cabinet.

(9) "Admixed liner" means a liner made from a mixture of any of a multitude of materials, often asphalt or cement, with widely varying physical and chemical properties. Admixed liners shall be demonstrated to be structurally sound and chemically resistant to the waste placed in it so as to be capable of supporting the waste without cracking or disintegrating or allowing waste or leachate to escape.

(10) "Agricultural waste" means any nonhazardous waste resulting from the production and processing of on-the-farm agricultural products, including manures, prunings and crop residues.

(11) "Air stripping operation" is a desorption operation employed to transfer one (1) or more volatile components from a liquid mixture into a gas (air) either with or without the application of heat to the liquid. Packed towers, spray towers, and bubble-cap, sieve, or valve-type plate towers are among the process configurations used for contacting the air and a liquid.

(12) "Ampule" means a small sealed glass container for one (1) dose of sterile medicine.

(13) "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to hazardous waste management units including tanks between hazardous waste storage and treatment tanks to a point of disposal on site, or to a point of shipment for disposal off site.

(14) "Application" means the form approved by the cabinet for applying for a permit, including any additions, revisions or modifications and any narrative and drawings required by 401 KAR Chapters 30 to 48. The term includes: Part A of the application (Part A); Part B of the application (Part B); notice of intent; administration application; special waste application; or technical application.

(15) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(16) "As received waste" refers to the waste as received in the shipment from the generator or sample collector.

(17) "Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

(18) "Attenuation" means any decrease in the maximum concentration or total quantity of an applied chemical or biological constituent in a fixed time or distance traveled resulting from a physical, chemical, or biological reaction or transformation occurring in the zone of aeration or zone of saturation.

(19) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit or part of a facility, such as the plant manager, superintendent, or person of equivalent responsibility.

(20) "Average volatile organic concentration" or "average VO concentration" means the mass-weighted average volatile organic concentration of a hazardous waste as determined in accordance with the requirements of Section 4 of 401 KAR 35:281.

(21) "Base flood" means a flood that has a one (1) percent or greater chance of recurring in any year, or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

(22) "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

(23) "Board" shall have the meaning specified in KRS 224.46-810.

(24) "Bodily injury" shall have the meaning given by applicable Kentucky statutes. Bodily injury does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for bodily injury.

(25) "Boiler" means an enclosed device using control flame combustion and having the following characteristics:

(a)1. The unit shall have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

2. The unit's combustion chamber and primary energy recovery section(s) shall be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section (such as water walls and superheaters) shall be physically formed into one (1) manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream) and fluidized bed combustion units; and

3. While in operation, the unit shall maintain a thermal energy recovery efficiency of at least sixty (60) percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

4. The unit shall export and utilize at least seventy-five (75) percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(b) The unit is one (1) which the cabinet has determined, on a case-by-case basis, to be a boiler, after considering the standards in 401 KAR 30:080.

(26) "Bottoms receiver" means a container or tank used to receive

and collect heavier bottoms fractions of the distillation feed stream that remain in the liquid phase.

(27) "Burn" means burning for energy recovery or destruction, or processing for materials recovery or as an ingredient.

(28) "By-product" is a material that is not one (1) of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a coproduct that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

(29) "Cabinet" shall have the meaning specified in KRS 224.01-010.

(30) "Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

(31) "Cation exchange capacity" means the sum of exchangeable cations a soil can absorb expressed in milliequivalents per 100 grams of soil as determined by sampling the soil to the depth of cultivation or solid waste placement, whichever is greater, and analyzing by the summation method for distinctly acid soils or the sodium acetate method for neutral, calcareous, or saline soils.

(32) "Certificate" shall have the meaning specified in KRS 224.46-810.

(33) "Certification" means a statement of professional opinion based upon knowledge and belief.

(34) "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements.

(35) "Closed-vent system" means a system that is not open to the atmosphere and that is composed of piping, connections, and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device.

(36) "Closure plan" means the plan for closure prepared in accordance with the requirements of Section 3 of 401 KAR 34:070 or Section 3 of 401 KAR 35:070.

(37) "Closure" shall have the meaning specified in KRS 224.01-010.

(38) "Component" means either the tank or ancillary equipment of a tank system.

(39) "Condenser" means a heat-transfer device that reduces a thermodynamic fluid from its vapor phase to its liquid phase.

(40) "Conditionally exempt small quantity generator" means:

(a) A generator who generates no more than 100 kilograms of hazardous waste in a calendar month; and

(b) A generator who generates acutely hazardous waste listed in Sections 2, 3, and 4(5) of 401 KAR 31:040 in a calendar month in quantities greater than one (1) kilogram. All quantities of that acutely hazardous waste are subject to administrative regulation under 401 KAR Chapters 32 through 39, and the notification and permitting requirements of KRS 224.01-400, 224.40-310, 224.46-510, 224.46-580, and 224.50-130 to 224.50-413.

(41) "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(42) "Connector" means flanged, screwed, welded, or other joined fitting used to connect two (2) pipelines or a pipeline and a piece of equipment. For the purposes of reporting and recordkeeping, connector means flanged fittings that are not covered by insulation or other materials that prevent location of the fittings.

(43) "Consignee" means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste is sent.

(44) "Constituent" shall have the same meaning as "hazardous waste constituent."

(45) "Container" means any portable device in which hazardous waste is transported, stored, treated, or otherwise handled, and includes transport vehicles that are containers themselves (for

example, tank trucks, tanker-trailers, and rail tank cars), and containers placed on or in a transport vehicle.

(46) "Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of 401 KAR 34:245 or 35:245.

(47) "Contaminate" means introduce a substance that would cause:

(a) The concentration of that substance in the groundwater to exceed the maximum contaminant level specified in 401 KAR 30:031, Sections 5 and 6 of 401 KAR 47:030, or Section 8 of 401 KAR 34:060;

(b) An increase in the concentration of that substance in the groundwater where the existing concentration of that substance exceeds the maximum contaminant level specified in 401 KAR 30:031, 401 KAR 47:030, or Section 8 of 401 KAR 34:060; or

(c) A significant increase above established background levels, for substances that do not have an established maximum contamination level.

(48) "Contamination" means the degradation of naturally occurring water, air, or soil quality either directly or indirectly as a result of human activities.

(49) "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in the event of a fire, explosion, or release of waste or waste constituents into the environment which has the potential for endangering human health and the environment. Financial planning to identify resources for initiation of such action is a part of contingency plan development.

(50) "Continuous recorder" means a data recording device recording an instantaneous data value at least once every 15 minutes.

(51) "Control device shutdown" means the cessation of operation of a control device for any purpose.

(52) "Control device" means an enclosed combustion device, vapor recovery system, or flare. Any device the primary function of which is the recovery or capture of solvents or other organics for use, reuse, or sale (for example, a primary condenser on a solvent recovery unit) is not a control device.

(53) "Corrective action management unit" or "CAMU" means an area within a facility that is designated by the cabinet under 401 KAR 34:287, for the purpose of implementing corrective action requirements under Section 12 of 401 KAR 34:060 and KRS 224.46-520. A CAMU shall only be used for the management of remediation wastes pursuant to implementing such corrective action requirements at the facility.

(54) "Cover" means a device or system which is placed on or over a hazardous waste such that the entire hazardous waste surface area is enclosed and sealed to reduce air emissions to the atmosphere. A cover may have openings such as access hatches, sampling ports, and gauge wells that are necessary for operation, inspection, maintenance, or repair of the unit on which the cover is installed provided that each opening is closed and sealed when not in use. Examples of covers include a fixed roof installed on a tank, a floating membrane cover installed on a surface impoundment, a lid installed on a drum, and an enclosure in which an open container is placed during waste treatment.

(55) "Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(56) "Current closure and postclosure cost estimates" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:090 or Section 1(1), (2) and (3) of 401 KAR 35:090.

(57) "Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

(58) "Current plugging and abandonment cost estimates" as used in subsection (1) of this section refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer (see 40 CFR 144.70(f)).

(59) "Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 40 CFR 144.62(a), (b), and (c).

(60) "Current postclosure cost estimate" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:100 or Section 1(1), (2) and (3) of 401 KAR 35:100.

(61) "Debris" means solid material exceeding a 60mm particle size that is intended for disposal and that is: a manufactured object; plant or animal matter; or natural geologic material. However, the following materials are not debris: Any material for which a specific treatment standard is provided in 401 KAR 37:040, namely lead acid batteries, cadmium batteries, and radioactive lead soils; Process residuals such as smelter slag and residues from the treatment of waste, wastewater, sludges, or air emission residues; and Intact containers of hazardous waste that are not ruptured and that retain at least 75% of their original volume. A mixture of debris that has not been treated to the standards provided by Section 6 of 401 KAR 37:040 and other material is subject to regulation as debris if the mixture is comprised primarily of debris, by volume, based on visual inspection.

(62) "Designated facility" means a hazardous waste treatment, storage, or disposal facility which:

(a) Has received a hazardous waste site or facility permit (or a facility with interim status) in accordance with the requirements of 401 KAR Chapter 38;

(b) Has received a permit from a state authorized in accordance with 40 CFR Part 271, and EPA permit (or a facility with interim status) in accordance with 40 CFR Parts 270 and 124; or

(c) Is regulated under Section 6(3)(b) of 401 KAR 31:010 or 401 KAR Chapter 36, 40 CFR 261.6(c)(2) or 40 CFR Part 266, and that has been designated on the manifest by the generator pursuant to Section 1 of 401 KAR 32:020. If a waste is destined to a hazardous waste site or facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility shall be a facility allowed by the receiving state to accept that waste.

(63) "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in Section 4(1) and (3) of 401 KAR 43:020 and Section 4(1) and (3) of 401 KAR 43:030. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

(64) "Destruction or adverse modification" means an alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

(65) "Dike" means an embankment or ridge of either natural or manmade materials used to prevent the movement of liquids, sludges, solids, or other materials.

(66) "Direct transfer equipment" means any device (including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps) that is used to distribute, meter, or control the flow of hazardous waste between a container (for example, transport vehicle) and a boiler or industrial furnace.

(67) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

(68) "Disposal" shall have the meaning specified in KRS 224.01-010.

(69) "Distillate receiver" means a container or tank used to

receive and collect liquid material (condensed) from the overhead condenser of a distillation unit and from which the condensed liquid is pumped to larger storage tanks or other process units.

(70) "Distillation operation" means an operation, either batch or continuous, separating one (1) or more feed stream(s) into two (2) or more exit streams, each exit stream having component concentrations different from those in the feed stream(s). The separation is achieved by the redistribution of the components between the liquid and vapor phase as they approach equilibrium within the distillation unit.

(71) "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(72) "Double block and bleed system" means two (2) block valves connected in series with a bleed valve or line that can vent the line between the two (2) block valves.

(73) "Draft permit" shall have the same meaning as "proposed permit".

(74) "Drip pad" means an engineered structure consisting of a curbed, free-draining base, constructed of nonearthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(75) "Effluent limitations" shall have the same meaning as KRS 224.01-010.

(76) "Elementary neutralization unit" means a device which:

(a) Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in Section 3 of 401 KAR 31:030, or they are listed in 401 KAR 31:040 only for this reason; and

(b) Meets the definition of tank, tank system, container, transport vehicle, or vessel in this section.

(77) "Emergency permit" means a permit issued by the cabinet to temporarily store, treat or dispose of hazardous waste in accordance with the provisions of Section 2 of 401 KAR 38:060, to temporarily manage, process, or dispose of a solid waste in accordance with the provisions of Section 2 of 401 KAR 47:150 or to temporarily store, treat, or dispose of special waste in accordance with the provisions of Section 1 of 401 KAR 45:135.

(78) "Endangered or threatened species" means any species listed as such pursuant to Section 4 of the Endangered Species Act, as amended, 16 USC 1536.

(79) "Engineer" shall have the meaning specified in KRS 322.010. An independent, professional engineer shall be registered in Kentucky pursuant to KRS 322.040 and shall be qualified to engage in waste management engineering practices.

(80) "EPA acknowledgment of consent" means the cable sent to EPA from the U.S. Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

(81) "EPA hazardous waste number" means the number assigned by EPA and the cabinet to each hazardous waste listed in 401 KAR 31:040, and to each characteristic identified in 401 KAR 31:030.

(82) "EPA identification number" means the number assigned by EPA or the cabinet to each generator; transporter; or treatment, storage, or disposal facility.

(83) "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice and which has a channel bottom that is always above the local water table.

(84) "Equipment" means each valve, pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, or flange, and any control devices or systems required by this administrative regulation.

(85) "Equivalent method" means any testing or analytical method, approved jointly by the administrator and the secretary under 401 KAR Chapter 31, or methods in 401 KAR Chapters 47 and 48, approved by the secretary of the cabinet.

(86) "Existing" indicates a boiler or industrial furnace that on or before August 21, 1991 is either in operation burning, or processing hazardous waste or for which construction (including the ancillary facilities to burn or to process the hazardous waste) has commenced.

(87) "Existing component" shall have the same meaning as "existing tank system."

(88) "Existing facility" shall have the same meaning as "existing hazardous waste site or facility".

(89) "Existing hazardous waste site or facility" means a hazardous waste facility which was in operation, or for which continuous construction had commenced, on or before November 19, 1980. A facility has commenced construction if:

(a) The owner or operator had obtained the federal, state and local approvals or permits necessary to begin physical construction; and

(b) Either:

1. A continuous on-site, physical construction program has begun; or

2. The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the facility to be completed within a reasonable time.

(90) "Existing portion" means that land surface area of an existing hazardous waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

(91) "Existing tank system" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(a) A continuous on-site physical construction or installation program has begun; or

(b) The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the site or installation of the tank system to be completed within a reasonable time.

(92) "External floating roof" means a pontoon or double-deck type floating roof that rests on the surface of a hazardous waste being managed in a tank that has no fixed roof.

(93) "Face amount" means the total amount the insurer is obligated to pay under the policy.

(94) "Facility" means:

(a) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).

(b) For the purpose of implementing corrective action under Section 12 of 401 KAR 34:060, all contiguous property under the control of the owner or operator seeking a hazardous waste permit. This definition also applies to facilities implementing corrective action under KRS 224.46-520.

(95) "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation, and the United States Government Printing Office.

(96) "Federal, state, and local approvals or permits necessary to begin physical construction" means permits and approvals required under federal, state, or local hazardous waste control statutes, administrative regulations, or ordinances.

(97) "Final closure" of a hazardous waste site or facility means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under 401 KAR Chapters 34 and 35

are no longer conducted at the facility unless subject to the provisions in Section 5 of 401 KAR 32:030.

(98) "First attempt at repair" means to take rapid action for the purpose of stopping or reducing leakage of organic material to the atmosphere using best practices.

(99) "Fiscal year" means a twelve (12) month period for accounting and other financial purposes.

(100) "Fixed roof" means a rigid cover that is installed in a stationary position so that it does not move with fluctuations in the level of the hazardous waste placed in a tank.

(101) "Flame zone" means the portion of the combustion chamber in a boiler occupied by the flame envelope.

(102) "Floating membrane cover" means a cover consisting of a synthetic flexible membrane material that rests upon and is supported by the hazardous waste being managed in a surface impoundment.

(103) "Floating roof" means a pontoon-type or double-deck type cover that rests upon and is supported by the hazardous waste being managed in a tank, and is equipped with a closure seal or seals to close the space between the cover edge and the tank wall.

(104) "Flood plain" means areas adjoining inland waters which are inundated by the base flood, unless otherwise specified in 401 KAR 30:031 or 401 KAR 47:030, and includes: 100-year floodplain and floodway.

(105) "Floodway" means the channel of the waterway, stream or river and that portion of the adjoining floodplain which provides for passage of the 100-year flood flow without increasing the floodwater depth across the 100-year floodplain by more than one (1) foot.

(106) "Flow indicator" means a device that indicates whether gas flow is present in a vent stream.

(107) "Food chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(108) "Fractionation operation" means a distillation operation or method used to separate a mixture of several volatile components of different boiling points in successive stages, each stage removing from the mixture some proportion of one of the components.

(109) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(110) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.

(111) "Generator" shall have the meaning specified in KRS 224.01-010.

(112) "Governing body" shall have the same meaning as KRS 224.01-010.

(113) "Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.

(114) "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table, and perched water zones below the B-soil horizon, including water circulating through fractures, bedding planes, and solution conduits.

(115) "Halogenated organic compounds" or "HOCs" means those compounds having a carbon-halogen bond that are listed under 401 KAR 37:110.

(116) "Hazardous constituent" shall have the meaning specified in KRS 224.01.010.

(117) "Hazardous waste constituent" means a constituent which caused the cabinet to list the hazardous waste in 401 KAR 31:040, or a constituent listed in Section 5(3) of 401 KAR 31:030.

(118) "Hazardous waste management unit shutdown" means a work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit. An unscheduled work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit for less than twenty-four (24) hours is not a hazardous waste management unit

shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping operation are not hazardous waste management unit shutdowns.

(119) "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed. Hazardous waste management units include: aboveground tank; component; existing tank system or existing component; in-ground tank; new tank system or new tank component; on-ground tank; tank system; underground tank; or unfit-for-use tank system.

(120) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

(121) "Hazardous waste site or facility" means any place at which hazardous waste is treated, stored, or disposed of by landfilling, incineration, or any other method. Hazardous waste site or facility includes: boiler; disposal facility; elementary neutralization unit; incinerator; industrial furnace; hazardous waste transfer facility; injection well; landfill; land treatment facility; miscellaneous unit; pile or waste pile; replacement unit; storage facility; sludge dryer; surface impoundment; tank; thermal treatment facility; totally enclosed treatment facility; treatment facility; or wastewater treatment unit.

(122) "Hazardous waste transfer facility" means any transportation related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

(123) "Hazardous waste" shall have the meaning specified in KRS 224.01-010.

(124) "Holocene" means the most recent epoch of the quaternary period, extending from the end of the pleistocene to the present.

(125) "Hot well" means a container for collecting condensate as in a steam condenser serving a vacuum-jet or steam-jet ejector.

(126) "Household waste" means any waste material (including garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

(127) "In existence" shall have the same meaning as "existing."

(128) "In gas service" means that the piece of equipment contains or contacts a hazardous waste stream that is in the gaseous state at operating conditions.

(129) "In heavy liquid service" means that the piece of equipment is not in gas service or in vapor service or in light liquid service.

(130) "In light liquid service" means that the piece of equipment contains or contacts a waste stream where the vapor pressure of one (1) or more of the components in the stream is greater than three-tenths (0.3) kilopascals (kPa) at twenty (20) degrees Centigrade, the total concentration of the pure components having a vapor pressure greater than three-tenths (0.3) kPa at twenty (20) degrees Centigrade is equal to or greater than twenty (20) percent by weight, and the fluid is a liquid at operating conditions.

(131) "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

(132) "In situ sampling systems" means nonextractive samplers or in-line samplers.

(133) "In vacuum service" means that equipment is operating at an internal pressure that is at least 5 kPa below ambient pressure.

(134) "In vapor service" shall have the same meaning as "in gas service."

(135) "In-ground tank" means a device meeting the definition of "tank" in this section whereby a portion of the tank wall is situated to

any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(136) "Inactive portion" means that portion of a hazardous waste site or facility which was not operated after November 19, 1980.

(137) "Incinerator" means any enclosed device that:

(a) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(b) Meets the definition of infrared incinerator or plasma arc incinerator.

(138) "Incompatible waste" means a hazardous waste which is unsuitable for placement in a particular device or facility because it may cause corrosion or decay of containment materials, or unsuitable for commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(139) "Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

(140) "Individual generation site" means the contiguous site at or on which one (1) or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one (1) or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

(141) "Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

(a) Cement kilns;

(b) Lime kilns;

(c) Aggregate kilns;

(d) Phosphate kilns;

(e) Coke ovens;

(f) Blast furnaces;

(g) Smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);

(h) Titanium dioxide chloride process oxidation reactors;

(i) Methane reforming furnaces;

(j) Pulping liquor recovery furnaces;

(k) Combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(l) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least three (3) percent, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of twenty (20) percent as generated; or

(m) Other devices as the cabinet may, after notice and comment, add to this list on the basis of criteria and Section 5 of 401 KAR 30:080.

(142) "Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(143) "Injection well" means a well into which fluids are injected to achieve subsurface emplacement.

(144) "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained hazardous waste or reagents used to treat the hazardous waste.

(145) "Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineer-

ing, acquired by a professional education and related practical experience, is qualified to supervise the installation of a hazardous waste management unit including tank systems.

(146) "Interim status" means the designation of a hazardous waste site or facility which was in existence on November 19, 1980, and has submitted a Part A application under 401 KAR Chapter 38 or under 40 CFR Part 270 and is treated as having a permit until final administrative disposition of the application is made.

(147) "Intermittent stream" means a stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year.

(148) "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

(149) "Internal floating roof" means a floating roof that rests or floats on the surface (but not necessarily in complete contact with it) of a hazardous waste being managed in a tank that has a fixed roof.

(150) "IUC well" means a underground injection control well as provided in 40 CFR Part 144.

(151) "Karst terrain" means a type of topography where limestone, dolomite or gypsum is present and is characterized by naturally occurring closed topographic depressions or sinkholes, caves, disrupted surface drainage, and well developed underground solution channels formed by dissolution of these rocks by water moving underground.

(152) "Key personnel" shall have the meaning specified in KRS 224.01-010.

(153) "Lab pack" means any large container equal to or smaller than fifty-five (55) gallons that holds many smaller containers of various content tightly secured with packing material.

(154) "Lamp" means the bulb or tube portion of a lighting device specifically designed to produce radiant energy, most often in the ultraviolet (UV), visible, and infra-red (IR) regions of the electromagnetic spectrum. Examples of common lamps include, but is not limited to, incandescent, fluorescent, high pressure sodium, mercury vapor, metal halide, high intensity discharge, and neon lamps.

(155) "Land disposal" shall have the meaning specified in KRS 224.01-010.

(156) "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface. These facilities are disposal facilities if the waste will remain after closure.

(157) "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

(158) "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(159) "Large quantity handler of universal waste" means a universal waste handler who accumulates 5,000 kilograms or more total universal waste (batteries, lamps, pesticides, or thermostats, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total of universal waste is accumulated.

(160) "Leachate" means any liquid including any suspended components in the liquid, that has percolated through or drained from waste.

(161) "Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment system or the presence of a release of hazardous waste, hazardous waste constituents or accumulated liquid in the secondary containment system. Such a system shall employ operational controls (daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device

designed to detect continuously and automatically the failure of the primary or secondary containment system or the presence of a release of hazardous waste constituents or accumulated liquids into the secondary containment system.

(162) "Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

(163) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(164) "Liner" means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, ground water, or surface water at any time during the active life of the facility.

(165) "Liquid-mounted seal" means a foam or liquid-filled primary seal mounted in contact with the hazardous waste between the tank wall and the floating roof continuously around the circumference of the tank.

(166) "Local government" means the fiscal court of the county, urban-county government, or governing body of an incorporated municipality wherein a hazardous waste landfill or other site or facility for the land disposal of hazardous waste is proposed.

(167) "Major modification" means for hazardous waste sites or facilities, a change in ownership where the cabinet determines that other changes in the permit are necessary as a result of the change in ownership or operational control, area occupied, disposal method, or other significant change in the operation of a waste site or facility (Note: Minor modifications are described in Section 3 of 401 KAR 38:040).

(168) "Malfunction" means any sudden failure of a control device or a hazardous waste management unit or failure of a hazardous waste management unit to operate in a normal or usual manner, so that organic emissions are increased.

(169) "Manifest document number" means the EPA twelve (12) digit identification number assigned to the generator plus a unique, serially increasing, five (5) digit document number assigned to the manifest by the generator for recordkeeping and reporting purposes.

(170) "Manifest" shall have the meaning specified in KRS 224.01-010.

(171) "Maximum organic vapor pressure" means the equilibrium partial pressure exerted by the hazardous waste contained in a tank determined at the temperature equal to either: (1) the local maximum monthly average temperature as reported by the National Weather Service when the hazardous waste is stored or treated at ambient temperature; or (2) the highest calendar-month average temperature of the hazardous waste when the hazardous waste is stored at temperatures above the ambient temperature or when the hazardous waste is stored or treated at temperatures below the ambient temperature.

(172) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

(173) "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of, and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR Part 146, containment building, corrective action management unit, or unit eligible for a research, development, and demonstration permit under Section 6 of 401 KAR 38:060.

(174) "Monitoring well" means a well used to obtain water samples for water quality and quantity analysis and groundwater levels.

(175) "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.

(176) "Movement" means that hazardous waste transported to a facility in an individual vehicle.

(177) "Net working capital" means current assets minus current liabilities.

(178) "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

(179) "New tank component" shall have the same meaning as "new tank system".

(180) "New tank system" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation commenced after July 14, 1986; however, for purposes of Section 4(7)(b) of 401 KAR 34:190 and Section 4(7)(b) of 401 KAR 35:190, a new tank system is one for which construction commenced after July 14, 1986.

(181) "New" means any hazardous waste site or facility that commenced construction after November 19, 1980.

(182) "No detectable organic emissions" means no escape of organics from a device or system to the atmosphere as determined by an instrument reading less than 500 parts per million by volume (ppmv) above the background level at each joint, fitting, and seal when measured in accordance with the requirements of Method 21 in 40 CFR part 60, appendix A, and by no visible openings or defects in the device or system such as rips, tears, or gaps.

(183) "Nonsudden accidental occurrence" means an occurrence that takes place over time and involves continuous or repeated exposure.

(184) "Nonwastewaters" means wastes that do not meet the criteria for wastewaters found in the definition for wastewaters.

(185) "Not detected" means at or below the lower method calibration limit (MCL) in SW-846, Method 8290, Table 1.

(186) "Off-site" means properties noncontiguous to the site.

(187) "On-site" means on the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing, as opposed to going along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access is also considered on-site property.

(188) "Onground tank" means a device meeting the definition of tank that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(189) "Open burning" means the combustion of any material or solid waste without:

(a) Control of combustion air to maintain adequate temperature for efficient combustion;

(b) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(c) Control of emission of the gaseous combustion products.

(190) "Open-ended valve or line" means any valve, except pressure relief valves, having one (1) side of the valve seat in contact with process fluid and one (1) side open to the atmosphere, either directly or through open piping.

(191) "Operational plan" means the approved plan of operations filed with the cabinet which describes the method of operation that the permittee will use in the treatment, storage, or disposal of wastes.

(192) "Operator" means any person responsible for overall operation of an on-site or off-site waste facility, including any private contractor conducting operational activities at a federal facility.

(193) "Other site or facility for the land disposal of hazardous waste" means a disposal facility but shall not include a storage facility or a treatment facility.

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(194) "Owner" means any person who owns an on-site or off-site waste facility, or any part of a facility.

(195) "Parent corporation" means a corporation which directly owns at least fifty (50) percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

(196) "Part A of the application" or "Part A" means the standard forms or format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:080.

(197) "Part B of the application" or "Part B" means the standard format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:090 to 401 KAR 38:210.

(198) "Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of 401 KAR Chapters 34 and 35 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

(199) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface run-off. The term does not include "intermittent stream" or "ephemeral stream".

(200) "Permit by rule" means authorization allowing certain classes of sites or facilities to manage waste consistent with 401 KAR Chapters 30 to 49, without submission of a registration or permit application to the cabinet. Examples of hazardous waste sites or facilities which are permitted by rule include facilities operating under an interim status permit and facilities identified in Section 1 of 401 KAR 38:060.

(201) "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management administrative regulations. The term permit includes permit-by-rule, registered permit-by-rule, research, development, and demonstration permit, and emergency permit. However, the term permit does not include draft permit or proposed permit.

(202) "Permittee" means any person holding a valid permit issued by the cabinet to manage, treat, store, or dispose of waste.

(203) "Person" shall have the meaning specified in KRS 224.01-010.

(204) "Personnel" or "facility personnel" means all persons who work at or oversee the operations of a waste facility, and whose actions or failure to act may result in noncompliance with the requirements of the waste management administrative regulations.

(205) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(a) Is a new animal drug under FFDCA section 201(w), or

(b) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or

(c) Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by paragraph (a) or (b) of this subsection.

(206) "Pile" or "waste pile" means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

(207) "Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame and which is not listed as an industrial furnace.

(208) "Point of compliance" means for solid waste site and facilities, groundwater monitoring wells located within 250 feet of the waste boundary as approved by the cabinet.

(209) "Point of waste origination" means as follows:

(a) When the facility owner or operator is the generator of the hazardous waste, the point of waste origination means the point where a solid waste produced by a system, process, or waste management unit is determined to be a hazardous waste as defined in 40 CFR part 261.

(b) When the facility owner and operator are not the generator of the hazardous waste, point of waste origination means the point where the owner or operator accepts delivery or takes possession of the hazardous waste.

(210) "Point of waste treatment" means the point where a hazardous waste exits a waste management unit used to destroy, degrade, or remove organics in the hazardous waste.

(211) "Point source" means any discernible, confined, and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(212) "Pollutant" shall have the same meaning as KRS 224.01-010.

(213) "Polychlorinated biphenyls" or "PCB" means halogenated organic compounds defined in accordance with 40 CFR 761.2 as of July 1989.

(214) "Postclosure care" means the manner in which a facility shall be maintained when it no longer accepts waste for disposal.

(215) "Postclosure monitoring and maintenance" shall have the meaning specified in KRS 224.01-010.

(216) "Postclosure plan" means the plan for postclosure care prepared in accordance with the requirements of Sections 8 to 11 of 401 KAR 34:070 or Sections 8 to 11 of 401 KAR 35:070.

(217) "Pressure release" means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device.

(218) "Primary exporter" means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with Section 1 of 401 KAR 32:020 which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

(219) "Process heater" means a device that transfers heat liberated by burning fuel to fluids contained in tubes, including all fluids except water that are heated to produce steam.

(220) "Process vent" means any open-ended pipe or stack that is vented to the atmosphere either directly, through a vacuum-producing system, or through a tank (distillate receiver, condenser, bottoms receiver, surge control tank, separator tank, or hot well) associated with hazardous waste distillation fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations.

(221) "Property damage" shall have the meaning given by applicable Kentucky statutes. Property damage does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for property damage.

(222) "Proposed permit" means a document prepared by the cabinet indicating the cabinet's tentative decision to issue or deny, modify, revoke or terminate a permit.

(223) "Publicly owned treatment works" or "POTW" shall have the meaning specified in KRS 224.01-010.

(224) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump.

(225) "Qualified groundwater scientist" means a geologist registered in Kentucky who has received a baccalaureate or postgraduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields to enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

(226) "Receiving country" means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal (except short-term storage incidental to transportation).

(227) "Recharge zone" means an area supplying the water which enters an underground drinking water source.

(228) "Reclaimed" means a material that is processed to recover a usable product, or that is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents.

(229) "Recovered material" shall have the meaning specified in KRS 224.01-010.

(230) "Recyclable materials" means hazardous wastes that are recycled.

(231) "Recycled" means a material that is used, reused, or reclaimed.

(232) "Recycling" shall have the meaning specified in KRS 224.01-010.

(233) "Regional integrated waste treatment and disposal demonstration facility" shall have the meaning specified in KRS 224.01-010.

(234) "Regulated unit" means hazardous waste land disposal sites or facilities, or portions of existing hazardous waste land disposal sites or facilities that continued to receive waste after January 26, 1983.

(235) "Remediation waste" means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under Section 12 of 401 KAR 34:060 and KRS 224.46-520. For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing KRS 224.46-520 for releases beyond the facility boundary.

(236) "Repaired" means that equipment is adjusted, or otherwise altered, to eliminate a leak.

(237) "Replacement unit" means a landfill, surface impoundment, or waste pile unit from which all or substantially all of the waste is removed, and that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or approved corrective action.

(238) "Representative sample" means a sample of a universe or whole (for example, waste pile, lagoon, or groundwater) which can be expected to exhibit the average properties of the universe or whole.

(239) "Research, development, and demonstration permit" means a permit issued by the cabinet for a hazardous waste treatment facility that utilizes an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under 401 KAR Chapters 34 through 36.

(240) "Resource recovery" means the recovery of material or energy from waste.

(241) "Run-off" means any rainwater, leachate, or other liquid that drains overland from any part of a facility.

(242) "Run-on" means any rainwater, leachate, or other liquid that drains overland onto any part of a facility.

(243) "Saturated zone" shall have the same meaning as "zone of saturation".

(244) "Schedule of compliance" means a schedule of remedial measures included in a permit or cabinet order, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with KRS Chapter 224 and 401 KAR Chapters 30 to 49.

(245) "Scrap metal" is bits and pieces of metal parts (for example, bars, turnings, rods, sheets, or wire) or metal pieces that may be combined together with bolts or soldering (for example, radiators, scrap automobiles, or railroad boxcars), which when worn or

superfluous can be recycled.

(246) "Secretary" shall have the meaning specified in KRS 224.01-010.

(247) "Sensor" means a device that measures a physical quantity or the change in a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

(248) "Separator tank" means a device used for separation of two immiscible liquids.

(249) "Sewage system" shall have the meaning specified in KRS 224.01-010.

(250) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the waste facility or activity.

(251) "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 BTU per pound of sludge treated on a wet-weight basis.

(252) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.

(253) "Small quantity generator" means a generator who generates more than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month.

(254) "Small quantity handler of universal waste" means a universal waste handler who does not accumulate more than 5,000 kilograms of universal waste (batteries, lamps, pesticides, or thermostats, collected collectively) at any time.

(255) "Solid waste management unit" shall mean any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at a facility at which solid wastes have been routinely and systematically released.

(256) "Solvent extraction operation" means an operation or method of separation in which a solid or solution is contacted with a liquid solvent (the two (2) being mutually insoluble) to preferentially dissolve and transfer one (1) or more components into the solvent.

(257) "Sorb" means to either adsorb, absorb, or both.

(258) "Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both.

(259) "Spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

(260) "Spill" means any accidental spilling, leaking, pumping, pouring, emitting, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes into or on any land or water.

(261) "Start-up" means the setting in operation of a hazardous waste management unit or control device for any purpose.

(262) "State" means any of the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands or Guam but does not include any foreign country.

(263) "Steam stripping operation" means a distillation operation in which vaporization of a volatile constituents of a liquid mixture takes place by the introduction of steam directly into the charge.

(264) "Storage facility" means a facility or part of a facility at which hazardous waste is held for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere. A generator who accumulates his own hazardous wastes in an approved manner for less than ninety (90) days for subsequent transport on site or off site is not operating or maintaining a storage facility.

(265) "Storage of hazardous waste" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed, or stored elsewhere.

(266) "Storage" shall have the meaning specified in KRS 224.01-

010.

(267) "Substantial business relationship" means the extent of a business relationship necessary to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" shall arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the cabinet.

(268) "Sudden accidental occurrence" means an occurrence which is not continuous or repeated in nature.

(269) "Sump" means any pit or reservoir that meets the definition of tank, and those troughs and trenches connected to it, that serves to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile administrative regulations, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(270) "Surface impoundment" means a facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(271) "Surge control tank" means a large-sized pipe or storage reservoir sufficient to contain the surging liquid discharge of the process tank to which it is connected.

(272) "Tangible net worth" means the tangible assets that remain after deducting liabilities; these assets would not include intangibles such as goodwill and rights to patents or royalties.

(273) "Tank" means a stationary device designed to contain an accumulation of hazardous waste that is constructed primarily of nonearthen materials (for example, wood, concrete, steel, or plastic) which provide structural support and which does not meet the definition of any other unit.

(274) "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

(275) "Termination" shall have the meaning specified in KRS 224.01-010.

(276) "The full amount of the liability coverage to be provided" means the amount of coverage for sudden and nonsudden occurrences required to be provided by the owner or operator, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(277) "Thermal treatment facility" means a facility or part of a facility which uses elevated temperatures as the primary means to change the chemical, physical or biological character or composition of hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge.

(278) "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge (see also "incinerator" and "open burning").

(279) "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of Section 4(3)(b) of 401 KAR 43:020 or Section 4(3)(b) of 401 KAR 43:030.

(280) "Thin-film evaporation operation" means a distillation

operation that employees a heating surface consisting of a large diameter tube that may be either straight or tapered, horizontal or vertical. Liquid is spread on the tube wall by a rotating assembly of blades that maintain a close clearance from the wall or actually ride on the film of liquid on the wall.

(281) "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which acid is neutralized.

(282) "Transit country" means any foreign country, other than a receiving country, through which a hazardous waste is transported.

(283) "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body is a separate transport vehicle.

(284) "Transportation" shall have the meaning specified in KRS 224.01-010.

(285) "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway or water.

(286) "Treatability study" means :

(a) A study in which a hazardous waste is subjected to a treatment process to determine:

1. Whether the waste is amenable to the treatment process;
2. What pretreatment, if any, is required;
3. The optimal process conditions needed to achieve the desired treatment;
4. The efficiency of a treatment process for a specific waste or wastes; or
5. The characteristics and volumes of residuals from a particular treatment process.

(b) For the purpose of 401 KAR 31:010, Section 4(5) and (6), exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies.

(c) A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

(287) "Treatment facility" means a facility or part of a facility using any method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste nonhazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

(288) "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

(289) "Treatment" shall have the meaning specified in KRS 224.01-010.

(290) "Underground drinking water source" means:

(a) An aquifer supplying drinking water for human consumption; or

(b) An aquifer in which the groundwater contains less than 10,000 mg/l total dissolved solids.

(291) "Underground injection" means the subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well".)

(292) "Underground tank" means a device meeting the definition of "tank" in this section whose entire surface area is totally below the surface of and covered by the ground.

(293) "Underlying hazardous constituent" means any constituent listed in Section 1 of 401 KAR 37:040, Table - Treatment Standards for Hazardous Wastes, except vanadium and zinc, which can reasonably be expected to be present at the point of generation of the hazardous waste, at a concentration above the constituent-specific treatment standards.

(294) "Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

(295) "Universal waste" means any of the following hazardous wastes that are subject to the universal waste requirements of 401 KAR Chapter 43:

- (a) Batteries as described in Section 2 of 401 KAR 43:010;
- (b) Pesticides as described in Section 3 of 401 KAR 43:010;
- (c) Thermostats as described in Section 4 of 401 KAR 43:010;

and

- (d) Spent Lamps as described in Section 5 of 401 KAR 43:010.

(296) "Universal waste handler":

(a) Means:

- (1) A generator of universal waste; or
- (2) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(b) Does not mean:

- (1) A person who treats (except under the provisions of Sections 4(1) or (3) of 401 KAR 43:020 or Sections 4(1) or (3) of 401 KAR 43:030), disposes of, or recycles universal waste; or

- (2) A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

(297) "Universal waste transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.

(298) "Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

(299) "Unsaturated zone" shall have the same meaning as "Zone of aeration".

(300) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(301) "Used oil" shall have the same meaning as KRS 224.50-545.

(302) "Used or reused" means a material that is either:

- (a) Employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one (1) process used as feedstock in another process). However, a material shall not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

- (b) Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

(303) "Vapor incinerator" means any enclosed combustion device that is used for destroying organic compounds and does not extract energy in the form of steam or process heat.

(304) "Vapor recovery system" means that equipment, device, or apparatus capable of collecting vapors and gases discharged from a storage tank, and a vapor processing system capable of affecting such vapors and gases so as to prevent their emission into the atmosphere.

(305) "Vapor-mounted seal" means a foam-filled primary seal mounted continuously around the circumference of the tank so that there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the hazardous waste surface, and the floating roof.

(306) "Vented" means discharged through an opening, typically an open-ended pipe or stack, allowing the passage of a stream of liquids, gases, or fumes into the atmosphere. The passage of liquids, gases, or fumes is caused by mechanical means such as compressors or vacuum-producing systems or by process-related means such as evaporation produced by heating and not caused by tank loading and unloading (work losses) or by natural means such as diurnal temperature changes.

(307) "Vessel" means any watercraft used or capable of being used as a means of transportation on the water.

(308) "Volatile organic concentration" or "VO concentration" means the fraction by weight of organic compounds in a hazardous waste expressed in terms of parts per million (ppmw) as determined by direct measurement using Method 25D or by knowledge of the waste in accordance with the requirements of Section 4 of 401 KAR 35:040.

(309) "Washout" means the carrying away of waste by waters as a result of flooding.

(310) "Waste boundary" means the outermost perimeter of the waste (projected in the horizontal plane) as it would exist at completion of the disposal activity.

(311) "Waste determination" means performing all applicable procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine whether a hazardous waste meets standards specified in 401 KAR Chapter 35. Examples of a waste determination include performing the procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine the average VO concentration of a hazardous waste at the point of waste origination; the average VO concentration of a hazardous waste at the point of waste treatment and comparing the results to the exit concentration limit specified for the process used to treat the hazardous waste; determining the organic reduction efficiency and the organic biodegradation efficiency for a biological process used to treat a hazardous waste and comparing the results to the applicable standards; or the maximum volatile organic vapor pressure for a hazardous waste in a tank and comparing the results to the applicable standards.

(312) "Waste pile" shall have the same meaning as "pile".

(313) "Waste stabilization process" means any physical or chemical process used to either reduce the mobility of hazardous constituents in a hazardous waste or eliminate free liquids as determined by Test Method 9095 (Paint Filter Liquids Test) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW-846, Third Edition, September 1986, as amended by Update I, November 15, 1992 (incorporated by reference-refer to § 260.11 of this chapter). A waste stabilization process includes mixing the hazardous waste with binders or other materials, and curing the resulting hazardous waste and binder mixture. Other synonymous terms used to refer to this process are "waste fixation" or "waste solidification."

(314) "Waste" shall have the meaning specified in KRS 224.01-010.

(315) "Wastewaters" means wastes that contain less than one (1) percent by weight total organic carbon (TOC) and less than one (1) percent by weight total suspended solids (TSS), with the following exceptions:

- (a) F001, F002, F003, F004, F005, wastewaters are solvent-water mixtures that contain less than one (1) percent by weight TOC or less than one (1) percent by weight total F001, F002, F003, F004, F005 solvent constituents listed in Section 1 of 401 KAR 37:040 in Table Treatment Standards for Hazardous Waste;

- (b) K011, K013, K014 wastewaters contain less than five (5) percent by weight TOC and less than one (1) percent by weight TSS, as generated; and

- (c) K103 and K104 wastewaters contain less than four (4) percent by weight TOC and less than one (1) percent by weight TSS.

(316) "Wastewater treatment unit" means a device that:

(a) Is part of a wastewater treatment facility that is subject to administrative regulation under either section 402 or 307(b) of the CWA;

(b) Receives and treats or stores an influent wastewater which is a hazardous waste as defined in 401 KAR 31:010, Section 3; or generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in 401 KAR 31:010, Section 3; or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Section 3 of 401 KAR 31:010; and

(c) Meets the definition of tank or tank system in this administrative regulation.

(317) "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

(318) "Water" or "waters of the Commonwealth" shall have the meaning specified in KRS 224.01-010.

(319) "Well" means any shaft or pit dug or bored into the earth, generally of cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(320) "Wetlands" means land that has a predominance of hydric soils and is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(321) "Zone of aeration" means that region of the soil or rock between the land surface and the nearest saturated zone in which the interstices are occupied partially by air.

(322) "Zone of engineering control" means an area under the control of the owner or operator that upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to waters of the Commonwealth.

(323) "Zone of saturation" means that part of the earth's crust containing groundwater in which all voids, large and small, are filled with liquid.

Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by context, acronyms and abbreviations used in 401 KAR Chapter 33 shall have the meaning as identified in Table 1 of this administrative regulation.

Table 1. Acronyms and Abbreviations.

Am.	Amended
C	Corrosive waste
CAA	Clean Air Act, as amended
CFR	Code of Federal Regulations
cm	Centimeter
cm ²	Centimeter squared
CO	Carbon monoxide
CO ₂	Carbon dioxide
CWA	Clean Water Act, as amended
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980
DOT	United States Department of Transportation
DRE	Destruction and removal efficiency
E	Explosive waste
eff.	Effective
EPA	United States Environmental Protection Agency
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act
FIA	Federal Insurance Administration
FR	Federal Register
H	Acutely hazardous waste
ha	Hectare
HTMR	High temperature metals recovery
HSWA	Hazardous and Solid Waste Amendments of

I	1994
KAR	Ignitable waste
kg	Kentucky Administrative Regulation
KPDES	Kilogram
KRS	Kentucky Pollution Discharge Elimination System
Ky.R.	Kentucky Revised Statute
I	Administrative Register of Kentucky
LC	Liter
LD	Lethal concentration
ml	Lethal dose
mm	Milliliter
N	Millimeter
NESHAPS	Normal
NPDES	National Emissions Standards for Hazardous Air Pollutants
PCB	National Pollutant and Discharge Elimination System
pCi/l	Polychlorinated biphenyl
PHC	Picocuries per liter
Permit POHC	Principal hazardous constituent
PM	Permitted principal organic hazardous constituent
POHC	Particulate matter
ppm	Principal organic hazardous constituent
Trial POHC	parts per million
POTW	Trial burn principal organic hazardous constituent
PSD	Publicly owned treatment works
psi	Prevention of significant deterioration
psig	Pounds per square inch
R	Pounds per square inch gauge
RCRA	Reactive waste
SDWA	Resource Conservation and Recovery Act, as amended
SEC	Safe Drinking Water Act, as amended
SIC	Securities and Exchange Commission
SPCC	Standard Industrial Classification Code
T	Spill Prevention, Control, and Countermeasures Plan
UIC	Toxic waste
UICP	Underground Injection Control
USC	Underground Injection Control Program
U.S. EPA	United States Code
USGS	United States Environmental Protection Agency
USPS	United States Geological Survey
	United States Postal Service

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The

preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: This regulation does not affect any entities, because it only defines terms used in the chapter. The regulation was promulgated to comply with KRS 13A.222.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The cabinet will experience no additional costs or savings by promulgating the amendments to this regulation.

2. Continuing costs or savings: No requirements have been imposed to affect costs and savings.

3. Additional factors increasing or decreasing costs: There will be no additional factors affecting costs.

b. Reporting and paperwork requirements: There will be no extra paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on the state and local revenue with the promulgation of this regulation.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No costs are imposed with the promulgation of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: There were no other alternatives.

8. Assessment of expected benefits of the administrative regulation: The benefit is having the definitions clearly stated at the beginning of each chapter.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Not applicable since no requirements are imposed.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of hazardous waste generated or managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments establish definitions of hazardous waste terms and the clarification of certain definitions. This regulation is necessary to maintain consistency between state and federal programs. In addition, the regulation has been modified to reflect regulation construction specified in KRS 13A.222.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that are hazardous waste transporters.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. This administrative regulation establishes definitions for all terms within 401 KAR Chapter 33. These terms are assimilated from existing federal and state regulatory definitions and existing statutory definitions where applicable.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

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Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): Because this administrative regulation only establishes definitions for 401 KAR Chapter 33, this administrative regulation will not affect state, county, or local expenditures.

Other Explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (New Administrative Regulation)

401 KAR 34:005. Definitions related to 401 KAR Chapter 34.

RELATES TO: KRS 224.01, 224.10, 224.46, 40 CFR 260.10, 264.141, 264.1031, 264.1051, 264.1081

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520, 224.46-530

NECESSITY AND FUNCTION: This chapter establishes standards for new hazardous waste sites or facilities, as required by KRS 224.46-520 and 224.46-530. This administrative regulation defines essential terms that are used in this chapter.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or otherwise specifically indicated by context, terms in 401 KAR Chapter 34 shall have the meanings given in this Section.

(1) "100-year floodplain" means any land area which is subject to a one (1) percent or greater chance of flooding in any given year from any source.

(2) "100-year flood" means a flood that has a one (1) percent chance of being equaled or exceeded in any given year.

(3) "Aboveground tank" means a device meeting the definition of "tank" and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

(4) "Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

(5) "Accumulated speculatively" means that a material is accumulated before being recycled.

(a) A material is not accumulated speculatively, if the person accumulating it can show:

1. That the material is potentially recyclable and has a feasible means of being recycled; and

2. That - during the calendar year (commencing on January 1) - the amount of material that is recycled, or transferred to a different site for recycling, equals at least seventy-five (75) percent by weight or volume of the amount of that material accumulated at the beginning of the calendar year (including any material accumulated from previous years).

(b) In calculating the percentage of turnover, the seventy-five (75) percent requirement is to be applied to each material of the same type that is recycled in the same way. Materials accumulating in units that would be exempt from administrative regulation under Section 4(3) of 401 KAR 31:010 are not to be included in making the calculation. (Materials that are already defined as wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling.

(6) "Active fault" means a land area which, according to the weight of geological evidence, has a reasonable probability of being affected by movement along a fault to the extent that a waste site or facility would be damaged and thereby pose a threat to human health and the environment.

(7) "Active life" of a facility means the period from the initial receipt of waste at a waste site or facility until the cabinet receives certification of final closure.

(8) "Active portion" means any area of a facility where treatment, storage, or disposal operations are being or have been conducted and which have not been closed. It includes the treated area of a landfarm and the active face of a landfill. Covered, closed, or inactive portions of landfills, building roofs, and roads are excluded unless designated as "active portions" by the cabinet.

(9) "Admixed liner" means a liner made from a mixture of any of a multitude of materials, often asphalt or cement, with widely varying physical and chemical properties. Admixed liners shall be demonstrated to be structurally sound and chemically resistant to the waste placed in it so as to be capable of supporting the waste without cracking or disintegrating or allowing waste or leachate to escape.

(10) "Agricultural waste" means any nonhazardous waste resulting from the production and processing of on-the-farm agricultural products, including manures, prunings and crop residues.

(11) "Air stripping operation" is a desorption operation employed to transfer one (1) or more volatile components from a liquid mixture into a gas (air) either with or without the application of heat to the liquid. Packed towers, spray towers, and bubble-cap, sieve, or valve-type plate towers are among the process configurations used for contacting the air and a liquid.

(12) "Ampule" means a small sealed glass container for one (1) dose of sterile medicine.

(13) "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to hazardous waste management units including tanks between hazardous waste storage and treatment tanks to a point of disposal on site, or to a point of shipment for disposal off site.

(14) "Application" means the form approved by the cabinet for applying for a permit, including any additions, revisions or modifications and any narrative and drawings required by 401 KAR Chapters 30 to 48. The term includes: Part A of the application (Part A); Part B of the application (Part B); notice of intent; administration application; special waste application; or technical application.

(15) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(16) "As received waste" refers to the waste as received in the shipment from the generator or sample collector.

(17) "Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

(18) "Attenuation" means any decrease in the maximum concentration or total quantity of an applied chemical or biological constituent in a fixed time or distance traveled resulting from a physical, chemical, or biological reaction or transformation occurring in the zone of aeration or zone of saturation.

(19) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit or part of a facility, such as the plant manager, superintendent, or person of equivalent responsibility.

(20) "Average volatile organic concentration" or "average VO concentration" means the mass-weighted average volatile organic concentration of a hazardous waste as determined in accordance with the requirements of Section 4 of 401 KAR 35:281.

(21) "Base flood" means a flood that has a one (1) percent or greater chance of recurring in any year, or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

(22) "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such

connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

(23) "Board" shall have the meaning specified in KRS 224.46-810.

(24) "Bodily injury" shall have the meaning given by applicable Kentucky statutes. Bodily injury does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for bodily injury.

(25) "Boiler" means an enclosed device using control flame combustion and having the following characteristics:

(a)1. The unit shall have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

2. The unit's combustion chamber and primary energy recovery section(s) shall be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section (such as water walls and superheaters) shall be physically formed into one (1) manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream) and fluidized bed combustion units; and

3. hile in operation, the unit shall maintain a thermal energy recovery efficiency of at least sixty (60) percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

4. The unit shall export and utilize at least seventy-five (75) percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(b) The unit is one (1) which the cabinet has determined, on a case-by-case basis, to be a boiler, after considering the standards in 401 KAR 30:080.

(26) "Bottoms receiver" means a container or tank used to receive and collect heavier bottoms fractions of the distillation feed stream that remain in the liquid phase.

(27) "Burn" means burning for energy recovery or destruction, or processing for materials recovery or as an ingredient.

(28) "By-product" is a material that is not one (1) of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a coproduct that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

(29) "Cabinet" shall have the meaning specified in KRS 224.01-010.

(30) "Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

(31) "Cation exchange capacity" means the sum of exchangeable cations a soil can absorb expressed in milliequivalents per 100 grams of soil as determined by sampling the soil to the depth of cultivation or solid waste placement, whichever is greater, and analyzing by the summation method for distinctly acid soils or the sodium acetate method for neutral, calcareous, or saline soils.

(32) "Certificate" shall have the meaning specified in KRS 224.46-810.

(33) "Certification" means a statement of professional opinion based upon knowledge and belief.

(34) "Closed portion" means that portion of a facility which an

owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements.

(35) "Closed-vent system" means a system that is not open to the atmosphere and that is composed of piping, connections, and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device.

(36) "Closure plan" means the plan for closure prepared in accordance with the requirements of Section 3 of 401 KAR 34:070 or Section 3 of 401 KAR 35:070.

(37) "Closure" shall have the meaning specified in KRS 224.01-010.

(38) "Component" means either the tank or ancillary equipment of a tank system.

(39) "Condenser" means a heat-transfer device that reduces a thermodynamic fluid from its vapor phase to its liquid phase.

(40) "Conditionally exempt small quantity generator" means:

(a) A generator who generates no more than 100 kilograms of hazardous waste in a calendar month; and

(b) A generator who generates acutely hazardous waste listed in Sections 2, 3, and 4(5) of 401 KAR 31:040 in a calendar month in quantities greater than one (1) kilogram. All quantities of that acutely hazardous waste are subject to administrative regulation under 401 KAR Chapters 32 through 39, and the notification and permitting requirements of KRS 224.01-400, 224.40-310, 224.46-510, 224.46-580, and 224.50-130 to 224.50-413.

(41) "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(42) "Connector" means flanged, screwed, welded, or other joined fitting used to connect two (2) pipelines or a pipeline and a piece of equipment. For the purposes of reporting and recordkeeping, connector means flanged fittings that are not covered by insulation or other materials that prevent location of the fittings.

(43) "Consignee" means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste is sent.

(44) "Constituent" shall have the same meaning as "hazardous waste constituent."

(45) "Container" means any portable device in which hazardous waste is transported, stored, treated, or otherwise handled, and includes transport vehicles that are containers themselves (for example, tank trucks, tanker-trailers, and rail tank cars), and containers placed on or in a transport vehicle.

(46) "Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of 401 KAR 34:245 or 35:245.

(47) "Contaminate" means introduce a substance that would cause:

(a) The concentration of that substance in the groundwater to exceed the maximum contaminant level specified in 401 KAR 30:031, Sections 5 and 6 of 401 KAR 47:030, or Section 8 of 401 KAR 34:060;

(b) An increase in the concentration of that substance in the groundwater where the existing concentration of that substance exceeds the maximum contaminant level specified in 401 KAR 30:031, 401 KAR 47:030, or Section 8 of 401 KAR 34:060; or

(c) A significant increase above established background levels, for substances that do not have an established maximum contamination level.

(48) "Contamination" means the degradation of naturally occurring water, air, or soil quality either directly or indirectly as a result of human activities.

(49) "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in the event of a fire, explosion, or release of waste or waste constituents into the environment which has the potential for endan-

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gering human health and the environment. Financial planning to identify resources for initiation of such action is a part of contingency plan development.

(50) "Continuous recorder" means a data recording device recording an instantaneous data value at least once every 15 minutes.

(51) "Control device shutdown" means the cessation of operation of a control device for any purpose.

(52) "Control device" means an enclosed combustion device, vapor recovery system, or flare. Any device the primary function of which is the recovery or capture of solvents or other organics for use, reuse, or sale (for example, a primary condenser on a solvent recovery unit) is not a control device.

(53) "Corrective action management unit" or "CAMU" means an area within a facility that is designated by the cabinet under 401 KAR 34:287, for the purpose of implementing corrective action requirements under Section 12 of 401 KAR 34:060 and KRS 224.46-520. A CAMU shall only be used for the management of remediation wastes pursuant to implementing such corrective action requirements at the facility.

(54) "Cover" means a device or system which is placed on or over a hazardous waste such that the entire hazardous waste surface area is enclosed and sealed to reduce air emissions to the atmosphere. A cover may have openings such as access hatches, sampling ports, and gauge wells that are necessary for operation, inspection, maintenance, or repair of the unit on which the cover is installed provided that each opening is closed and sealed when not in use. Examples of covers include a fixed roof installed on a tank, a floating membrane cover installed on a surface impoundment, a lid installed on a drum, and an enclosure in which an open container is placed during waste treatment.

(55) "Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(56) "Current closure and postclosure cost estimates" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:090 or Section 1(1), (2) and (3) of 401 KAR 35:090.

(57) "Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

(58) "Current plugging and abandonment cost estimates" as used in subsection (1) of this section refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer (see 40 CFR 144.70(f)).

(59) "Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 40 CFR 144.62(a), (b), and (c).

(60) "Current postclosure cost estimate" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:100 or Section 1(1), (2) and (3) of 401 KAR 35:100.

(61) "Debris" means solid material exceeding a 60mm particle size that is intended for disposal and that is: a manufactured object; plant or animal matter; or natural geologic material. However, the following materials are not debris: Any material for which a specific treatment standard is provided in 401 KAR 37:040, namely lead acid batteries, cadmium batteries, and radioactive lead soils; Process residuals such as smelter slag and residues from the treatment of waste, wastewater, sludges, or air emission residues; and Intact containers of hazardous waste that are not ruptured and that retain at least 75% of their original volume. A mixture of debris that has not been treated to the standards provided by Section 6 of 401 KAR 37:040 and other material is subject to regulation as debris if the mixture is comprised primarily of debris, by volume, based on visual inspection.

(62) "Designated facility" means a hazardous waste treatment,

storage, or disposal facility which:

(a) Has received a hazardous waste site or facility permit (or a facility with interim status) in accordance with the requirements of 401 KAR Chapter 38;

(b) Has received a permit from a state authorized in accordance with 40 CFR Part 271, and EPA permit (or a facility with interim status) in accordance with 40 CFR Parts 270 and 124; or

(c) Is regulated under Section 6(3)(b) of 401 KAR 31:010 or 401 KAR Chapter 36, 40 CFR 261.6(c)(2) or 40 CFR Part 266, and that has been designated on the manifest by the generator pursuant to Section 1 of 401 KAR 32:020. If a waste is destined to a hazardous waste site or facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility shall be a facility allowed by the receiving state to accept that waste.

(63) "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in Section 4(1) and (3) of 401 KAR 43:020 and Section 4(1) and (3) of 401 KAR 43:030. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

(64) "Destruction or adverse modification" means an alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

(65) "Dike" means an embankment or ridge of either natural or manmade materials used to prevent the movement of liquids, sludges, solids, or other materials.

(66) "Direct transfer equipment" means any device (including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps) that is used to distribute, meter, or control the flow of hazardous waste between a container (for example, transport vehicle) and a boiler or industrial furnace.

(67) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

(68) "Disposal" shall have the meaning specified in KRS 224.01-010.

(69) "Distillate receiver" means a container or tank used to receive and collect liquid material (condensed) from the overhead condenser of a distillation unit and from which the condensed liquid is pumped to larger storage tanks or other process units.

(70) "Distillation operation" means an operation, either batch or continuous, separating one (1) or more feed stream(s) into two (2) or more exit streams, each exit stream having component concentrations different from those in the feed stream(s). The separation is achieved by the redistribution of the components between the liquid and vapor phase as they approach equilibrium within the distillation unit.

(71) "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(72) "Double block and bleed system" means two (2) block valves connected in series with a bleed valve or line that can vent the line between the two (2) block valves.

(73) "Draft permit" shall have the same meaning as "proposed permit".

(74) "Drip pad" means an engineered structure consisting of a curbed, free-draining base, constructed of nonearthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(75) "Effluent Limitations" shall have the same meaning as KRS 224.01-010.

(76) "Elementary neutralization unit" means a device which:

(a) Is used for neutralizing wastes that are hazardous only

because they exhibit the corrosivity characteristic defined in Section 3 of 401 KAR 31:030, or they are listed in 401 KAR 31:040 only for this reason; and

(b) Meets the definition of tank, tank system, container, transport vehicle, or vessel in this section.

(77) "Emergency permit" means a permit issued by the cabinet to temporarily store, treat or dispose of hazardous waste in accordance with the provisions of Section 2 of 401 KAR 38:060, to temporarily manage, process, or dispose of a solid waste in accordance with the provisions of Section 2 of 401 KAR 47:150 or to temporarily store, treat, or dispose of special waste in accordance with the provisions of Section 1 of 401 KAR 45:135.

(78) "Endangered or threatened species" means any species listed as such pursuant to Section 4 of the Endangered Species Act, as amended, 16 USC 1536.

(79) "Engineer" shall have the meaning specified in KRS 322.010. An independent, professional engineer shall be registered in Kentucky pursuant to KRS 322.040 and shall be qualified to engage in waste management engineering practices.

(80) "EPA acknowledgment of consent" means the cable sent to EPA from the U.S. Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

(81) "EPA hazardous waste number" means the number assigned by EPA and the cabinet to each hazardous waste listed in 401 KAR 31:040, and to each characteristic identified in 401 KAR 31:030.

(82) "EPA identification number" means the number assigned by EPA or the cabinet to each generator; transporter; or treatment, storage, or disposal facility.

(83) "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice and which has a channel bottom that is always above the local water table.

(84) "Equipment" means each valve, pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, or flange, and any control devices or systems required by this administrative regulation.

(85) "Equivalent method" means any testing or analytical method, approved jointly by the administrator and the secretary under 401 KAR Chapter 31, or methods in 401 KAR Chapters 47 and 48, approved by the secretary of the cabinet.

(86) "Existing" indicates a boiler or industrial furnace that on or before August 21, 1991 is either in operation burning, or processing hazardous waste or for which construction (including the ancillary facilities to burn or to process the hazardous waste) has commenced.

(87) "Existing component" shall have the same meaning as "existing tank system."

(88) "Existing facility" shall have the same meaning as "existing hazardous waste site or facility".

(89) "Existing hazardous waste site or facility" means a hazardous waste facility which was in operation, or for which continuous construction had commenced, on or before November 19, 1980. A facility has commenced construction if:

(a) The owner or operator had obtained the federal, state and local approvals or permits necessary to begin physical construction; and

(b) Either:

1. A continuous on-site, physical construction program has begun; or

2. The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the facility to be completed within a reasonable time.

(90) "Existing portion" means that land surface area of an existing hazardous waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the

issuance of a permit.

(91) "Existing tank system" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(a) A continuous on-site physical construction or installation program has begun; or

(b) The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the site or installation of the tank system to be completed within a reasonable time.

(92) "External floating roof" means a pontoon or double-deck type floating roof that rests on the surface of a hazardous waste being managed in a tank that has no fixed roof.

(93) "Face amount" means the total amount the insurer is obligated to pay under the policy.

(94) "Facility" means:

(a) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).

(b) For the purpose of implementing corrective action under Section 12 of 401 KAR 34:060, all contiguous property under the control of the owner or operator seeking a hazardous waste permit. This definition also applies to facilities implementing corrective action under KRS 224.46-520.

(95) "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation, and the United States Government Printing Office.

(96) "Federal, state, and local approvals or permits necessary to begin physical construction" means permits and approvals required under federal, state, or local hazardous waste control statutes, administrative regulations, or ordinances.

(97) "Final closure" of a hazardous waste site or facility means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under 401 KAR Chapters 34 and 35 are no longer conducted at the facility unless subject to the provisions in Section 5 of 401 KAR 32:030.

(98) "First attempt at repair" means to take rapid action for the purpose of stopping or reducing leakage of organic material to the atmosphere using best practices.

(99) "Fiscal year" means a twelve (12) month period for accounting and other financial purposes.

(100) "Fixed roof" means a rigid cover that is installed in a stationary position so that it does not move with fluctuations in the level of the hazardous waste placed in a tank.

(101) "Flame zone" means the portion of the combustion chamber in a boiler occupied by the flame envelope.

(102) "Floating membrane cover" means a cover consisting of a synthetic flexible membrane material that rests upon and is supported by the hazardous waste being managed in a surface impoundment.

(103) "Floating roof" means a pontoon-type or double-deck type cover that rests upon and is supported by the hazardous waste being managed in a tank, and is equipped with a closure seal or seals to close the space between the cover edge and the tank wall.

(104) "Flood plain" means areas adjoining inland waters which are inundated by the base flood, unless otherwise specified in 401 KAR 30:031 or 401 KAR 47:030, and includes: 100-year floodplain and floodway.

(105) "Floodway" means the channel of the waterway, stream or river and that portion of the adjoining floodplain which provides for

passage of the 100-year flood flow without increasing the floodwater depth across the 100-year floodplain by more than one (1) foot.

(106) "Flow indicator" means a device that indicates whether gas flow is present in a vent stream.

(107) "Food chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(108) "Fractionation operation" means a distillation operation or method used to separate a mixture of several volatile components of different boiling points in successive stages, each stage removing from the mixture some proportion of one of the components.

(109) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(110) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.

(111) "Generator" shall have the meaning specified in KRS 224.01-010.

(112) "Governing body" shall have the same meaning as KRS 224.01-010.

(113) "Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.

(114) "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table, and perched water zones below the B-soil horizon, including water circulating through fractures, bedding planes, and solution conduits.

(115) "Halogenated organic compounds" or "HOCs" means those compounds having a carbon-halogen bond that are listed under 401 KAR 37:110.

(116) "Hazardous constituent" shall have the meaning specified in KRS 224.01.010.

(117) "Hazardous waste constituent" means a constituent which caused the cabinet to list the hazardous waste in 401 KAR 31:040, or a constituent listed in Section 5(3) of 401 KAR 31:030.

(118) "Hazardous waste management unit shutdown" means a work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit. An unscheduled work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit for less than twenty-four (24) hours is not a hazardous waste management unit shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping operation are not hazardous waste management unit shutdowns.

(119) "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed. Hazardous waste management units include: aboveground tank; component; existing tank system or existing component; in-ground tank; new tank system or new tank component; on-ground tank; tank system; underground tank; or unfit-for-use tank system.

(120) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

(121) "Hazardous waste site or facility" means any place at which hazardous waste is treated, stored, or disposed of by landfilling, incineration, or any other method. Hazardous waste site or facility includes: boiler; disposal facility; elementary neutralization unit; incinerator; industrial furnace; hazardous waste transfer facility; injection well; landfill; land treatment facility; miscellaneous unit; pile

or waste pile; replacement unit; storage facility; sludge dryer; surface impoundment; tank; thermal treatment facility; totally enclosed treatment facility; treatment facility; or wastewater treatment unit.

(122) "Hazardous waste transfer facility" means any transportation related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

(123) "Hazardous waste" shall have the meaning specified in KRS 224.01-010.

(124) "Holocene" means the most recent epoch of the quaternary period, extending from the end of the pleistocene to the present.

(125) "Hot well" means a container for collecting condensate as in a steam condenser serving a vacuum-jet or steam-jet ejector.

(126) "Household waste" means any waste material (including garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

(127) "In existence" shall have the same meaning as "existing."

(128) "In gas service" means that the piece of equipment contains or contacts a hazardous waste stream that is in the gaseous state at operating conditions.

(129) "In heavy liquid service" means that the piece of equipment is not in gas service or in vapor service or in light liquid service.

(130) "In light liquid service" means that the piece of equipment contains or contacts a waste stream where the vapor pressure of one (1) or more of the components in the stream is greater than three-tenths (0.3) kilopascals (kPa) at twenty (20) degrees Centigrade, the total concentration of the pure components having a vapor pressure greater than three-tenths (0.3) kPa at twenty (20) degrees Centigrade is equal to or greater than twenty (20) percent by weight, and the fluid is a liquid at operating conditions.

(131) "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

(132) "In situ sampling systems" means nonextractive samplers or in-line samplers.

(133) "In vacuum service" means that equipment is operating at an internal pressure that is at least 5 kPa below ambient pressure.

(134) "In vapor service" shall have the same meaning as "in gas service."

(135) "In-ground tank" means a device meeting the definition of "tank" in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(136) "Inactive portion" means that portion of a hazardous waste site or facility which was not operated after November 19, 1980.

(137) "Incinerator" means any enclosed device that:

(a) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(b) Meets the definition of infrared incinerator or plasma arc incinerator.

(138) "Incompatible waste" means a hazardous waste which is unsuitable for placement in a particular device or facility because it may cause corrosion or decay of containment materials, or unsuitable for commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(139) "Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

(140) "Individual generation site" means the contiguous site at or on which one (1) or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one (1) or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

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(141) "Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

- (a) Cement kilns;
- (b) Lime kilns;
- (c) Aggregate kilns;
- (d) Phosphate kilns;
- (e) Coke ovens;
- (f) Blast furnaces;

(g) Smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);

- (h) Titanium dioxide chloride process oxidation reactors;
- (i) Methane reforming furnaces;
- (j) Pulp liquor recovery furnaces;

(k) Combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(l) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least three (3) percent, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of twenty (20) percent as generated; or

(m) Other devices as the cabinet may, after notice and comment, add to this list on the basis of criteria and Section 5 of 401 KAR 30:080.

(142) "Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(143) "Injection well" means a well into which fluids are injected to achieve subsurface emplacement.

(144) "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained hazardous waste or reagents used to treat the hazardous waste.

(145) "Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of a hazardous waste management unit including tank systems.

(146) "Interim status" means the designation of a hazardous waste site or facility which was in existence on November 19, 1980, and has submitted a Part A application under 401 KAR Chapter 38 or under 40 CFR Part 270 and is treated as having a permit until final administrative disposition of the application is made.

(147) "Intermittent stream" means a stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year.

(148) "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

(149) "Internal floating roof" means a floating roof that rests or floats on the surface (but not necessarily in complete contact with it) of a hazardous waste being managed in a tank that has a fixed roof.

(150) "IUC well" means a underground injection control well as provided in 40 CFR Part 144.

(151) "Karst terrain" means a type of topography where limestone, dolomite or gypsum is present and is characterized by naturally occurring closed topographic depressions or sinkholes, caves, disrupted surface drainage, and well developed underground solution channels, formed by dissolution of these rocks by water moving underground.

(152) "Key personnel" shall have the meaning specified in KRS

224.01-010.

(153) "Lab pack" means any large container equal to or smaller than fifty-five (55) gallons that holds many smaller containers of various content tightly secured with packing material.

(154) "Lamp" means the bulb or tube portion of a lighting device specifically designed to produce radiant energy, most often in the ultraviolet (UV), visible, and infra-red (IR) regions of the electromagnetic spectrum. Examples of common lamps include, but is not limited to, incandescent, fluorescent, high pressure sodium, mercury vapor, metal halide, high intensity discharge, and neon lamps.

(155) "Land disposal" shall have the meaning specified in KRS 224.01-010.

(156) "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface. These facilities are disposal facilities if the waste will remain after closure.

(157) "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

(158) "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(159) "Large quantity handler of universal waste" means a universal waste handler who accumulates 5,000 kilograms or more total universal waste (batteries, lamps, pesticides, or thermostats, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total of universal waste is accumulated.

(160) "Leachate" means any liquid including any suspended components in the liquid, that has percolated through or drained from waste.

(161) "Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment system or the presence of a release of hazardous waste, hazardous waste constituents or accumulated liquid in the secondary containment system. Such a system shall employ operational controls (daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment system or the presence of a release of hazardous waste constituents or accumulated liquids into the secondary containment system.

(162) "Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

(163) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(164) "Liner" means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, ground water, or surface water at any time during the active life of the facility.

(165) "Liquid-mounted seal" means a foam or liquid-filled primary seal mounted in contact with the hazardous waste between the tank wall and the floating roof continuously around the circumference of the tank.

(166) "Local government" means the fiscal court of the county, urban-county government, or governing body of an incorporated municipality wherein a hazardous waste landfill or other site or facility for the land disposal of hazardous waste is proposed.

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(167) "Major modification" means for hazardous waste sites or facilities, a change in ownership where the cabinet determines that other changes in the permit are necessary as a result of the change in ownership or operational control, area occupied, disposal method, or other significant change in the operation of a waste site or facility (Note: Minor modifications are described in Section 3 of 401 KAR 38:040).

(168) "Malfunction" means any sudden failure of a control device or a hazardous waste management unit or failure of a hazardous waste management unit to operate in a normal or usual manner, so that organic emissions are increased.

(169) "Manifest document number" means the EPA twelve (12) digit identification number assigned to the generator plus a unique, serially increasing, five (5) digit document number assigned to the manifest by the generator for recordkeeping and reporting purposes.

(170) "Manifest" shall have the meaning specified in KRS 224.01-010.

(171) "Maximum organic vapor pressure" means the equilibrium partial pressure exerted by the hazardous waste contained in a tank determined at the temperature equal to either: (1) the local maximum monthly average temperature as reported by the National Weather Service when the hazardous waste is stored or treated at ambient temperature; or (2) the highest calendar-month average temperature of the hazardous waste when the hazardous waste is stored at temperatures above the ambient temperature or when the hazardous waste is stored or treated at temperatures below the ambient temperature.

(172) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

(173) "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of, and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR Part 146, containment building, corrective action management unit, or unit eligible for a research, development, and demonstration permit under Section 6 of 401 KAR 38:060.

(174) "Monitoring well" means a well used to obtain water samples for water quality and quantity analysis and groundwater levels.

(175) "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.

(176) "Movement" means that hazardous waste transported to a facility in an individual vehicle.

(177) "Net working capital" means current assets minus current liabilities.

(178) "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

(179) "New tank component" shall have the same meaning as "new tank system."

(180) "New tank system" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation commenced after July 14, 1986; however, for purposes of Section 4(7)(b) of 401 KAR 34:190 and Section 4(7)(b) of 401 KAR 35:190, a new tank system is one for which construction commenced after July 14, 1986.

(181) "New" means any hazardous waste site or facility that commenced construction after November 19, 1980.

(182) "No detectable organic emissions" means no escape of organics from a device or system to the atmosphere as determined by an instrument reading less than 500 parts per million by volume (ppmv) above the background level at each joint, fitting, and seal when measured in accordance with the requirements of Method 21 in 40 CFR part 60, appendix A, and by no visible openings or defects

in the device or system such as rips, tears, or gaps.

(183) "Nonsudden accidental occurrence" means an occurrence that takes place over time and involves continuous or repeated exposure.

(184) "Nonwastewaters" means wastes that do not meet the criteria for wastewaters found in the definition for wastewaters.

(185) "Not detected" means at or below the lower method calibration limit (MCL) in SW-846, Method 8290, Table 1.

(186) "Off-site" means properties noncontiguous to the site.

(187) "On-site" means on the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing, as opposed to going along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access is also considered on-site property.

(188) "Onground tank" means a device meeting the definition of tank that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(189) "Open burning" means the combustion of any material or solid waste without:

(a) Control of combustion air to maintain adequate temperature for efficient combustion;

(b) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(c) Control of emission of the gaseous combustion products.

(190) "Open-ended valve or line" means any valve, except pressure relief valves, having one (1) side of the valve seat in contact with process fluid and one (1) side open to the atmosphere, either directly or through open piping.

(191) "Operational plan" means the approved plan of operations filed with the cabinet which describes the method of operation that the permittee will use in the treatment, storage, or disposal of wastes.

(192) "Operator" means any person responsible for overall operation of an on-site or off-site waste facility, including any private contractor conducting operational activities at a federal facility.

(193) "Other site or facility for the land disposal of hazardous waste" means a disposal facility but shall not include a storage facility or a treatment facility.

(194) "Owner" means any person who owns an on-site or off-site waste facility, or any part of a facility.

(195) "Parent corporation" means a corporation which directly owns at least fifty (50) percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

(196) "Part A of the application" or "Part A" means the standard forms or format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:080.

(197) "Part B of the application" or "Part B" means the standard format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:090 to 401 KAR 38:210.

(198) "Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of 401 KAR Chapters 34 and 35 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

(199) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface run-off. The term does not include "intermittent stream" or "ephemeral stream".

(200) "Permit by rule" means authorization allowing certain

classes of sites or facilities to manage waste consistent with 401 KAR Chapters 30 to 49, without submission of a registration or permit application to the cabinet. Examples of hazardous waste sites or facilities which are permitted by rule include facilities operating under an interim status permit and facilities identified in Section 1 of 401 KAR 38:060.

(201) "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management administrative regulations. The term permit includes permit-by-rule, registered permit-by-rule, research, development, and demonstration permit, and emergency permit. However, the term permit does not include draft permit or proposed permit.

(202) "Permittee" means any person holding a valid permit issued by the cabinet to manage, treat, store, or dispose of waste.

(203) "Person" shall have the meaning specified in KRS 224.01-010.

(204) "Personnel" or "facility personnel" means all persons who work at or oversee the operations of a waste facility, and whose actions or failure to act may result in noncompliance with the requirements of the waste management administrative regulations.

(205) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(a) Is a new animal drug under FFDCA section 201(w), or

(b) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or

(c) Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by paragraph (a) or (b) of this subsection.

(206) "Pile" or "waste pile" means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

(207) "Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame and which is not listed as an industrial furnace.

(208) "Point of compliance" means for solid waste site and facilities, groundwater monitoring wells located within 250 feet of the waste boundary as approved by the cabinet.

(209) "Point of waste origination" means as follows:

(a) When the facility owner or operator is the generator of the hazardous waste, the point of waste origination means the point where a solid waste produced by a system, process, or waste management unit is determined to be a hazardous waste as defined in 40 CFR part 261.

(b) When the facility owner and operator are not the generator of the hazardous waste, point of waste origination means the point where the owner or operator accepts delivery or takes possession of the hazardous waste.

(210) "Point of waste treatment" means the point where a hazardous waste exits a waste management unit used to destroy, degrade, or remove organics in the hazardous waste.

(211) "Point source" means any discernible, confined, and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(212) "Pollutant" shall have the same meaning as KRS 224.01-010.

(213) "Polychlorinated biphenyls" or "PCB" means halogenated organic compounds defined in accordance with 40 CFR 761.2 as of July 1989.

(214) "Postclosure care" means the manner in which a facility shall be maintained when it no longer accepts waste for disposal.

(215) "Postclosure monitoring and maintenance" shall have the meaning specified in KRS 224.01-010.

(216) "Postclosure plan" means the plan for postclosure care prepared in accordance with the requirements of Sections 8 to 11 of 401 KAR 34:070 or Sections 8 to 11 of 401 KAR 35:070.

(217) "Pressure release" means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device.

(218) "Primary exporter" means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with Section 1 of 401 KAR 32:020 which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

(219) "Process heater" means a device that transfers heat liberated by burning fuel to fluids contained in tubes, including all fluids except water that are heated to produce steam.

(220) "Process vent" means any open-ended pipe or stack that is vented to the atmosphere either directly, through a vacuum-producing system, or through a tank (distillate receiver, condenser, bottoms receiver, surge control tank, separator tank, or hot well) associated with hazardous waste distillation fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations.

(221) "Property damage" shall have the meaning given by applicable Kentucky statutes. Property damage does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for property damage.

(222) "Proposed permit" means a document prepared by the cabinet indicating the cabinet's tentative decision to issue or deny, modify, revoke or terminate a permit.

(223) "Publicly owned treatment works" or "POTW" shall have the meaning specified in KRS 224.01-010.

(224) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump.

(225) "Qualified groundwater scientist" means a geologist registered in Kentucky who has received a baccalaureate or postgraduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields to enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

(226) "Receiving country" means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal (except short-term storage incidental to transportation).

(227) "Recharge zone" means an area supplying the water which enters an underground drinking water source.

(228) "Reclaimed" means a material that is processed to recover a usable product, or that is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents.

(229) "Recovered material" shall have the meaning specified in KRS 224.01-010.

(230) "Recyclable materials" means hazardous wastes that are recycled.

(231) "Recycled" means a material that is used, reused, or reclaimed.

(232) "Recycling" shall have the meaning specified in KRS 224.01-010.

(233) "Regional integrated waste treatment and disposal demonstration facility" shall have the meaning specified in KRS 224.01-010.

(234) "Regulated unit" means hazardous waste land disposal sites or facilities, or portions of existing hazardous waste land disposal sites or facilities that continued to receive waste after January 26, 1983.

(235) "Remediation waste" means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or

which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under Section 12 of 401 KAR 34:060 and KRS 224.46-520. For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing KRS 224.46-520 for releases beyond the facility boundary.

(236) "Repaired" means that equipment is adjusted, or otherwise altered, to eliminate a leak.

(237) "Replacement unit" means a landfill, surface impoundment, or waste pile unit from which all or substantially all of the waste is removed, and that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or approved corrective action.

(238) "Representative sample" means a sample of a universe or whole (for example, waste pile, lagoon, or groundwater) which can be expected to exhibit the average properties of the universe or whole.

(239) "Research, development, and demonstration permit" means a permit issued by the cabinet for a hazardous waste treatment facility that utilizes an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under 401 KAR Chapters 34 through 36.

(240) "Resource recovery" means the recovery of material or energy from waste.

(241) "Run-off" means any rainwater, leachate, or other liquid that drains overland from any part of a facility.

(242) "Run-on" means any rainwater, leachate, or other liquid that drains overland onto any part of a facility.

(243) "Saturated zone" shall have the same meaning as "zone of saturation".

(244) "Schedule of compliance" means a schedule of remedial measures included in a permit or cabinet order, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with KRS Chapter 224 and 401 KAR Chapters 30 to 49.

(245) "Scrap metal" is bits and pieces of metal parts (for example, bars, turnings, rods, sheets, or wire) or metal pieces that may be combined together with bolts or soldering (for example, radiators, scrap automobiles, or railroad boxcars), which when worn or superfluous can be recycled.

(246) "Secretary" shall have the meaning specified in KRS 224.01-010.

(247) "Sensor" means a device that measures a physical quantity or the change in a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

(248) "Separator tank" means a device used for separation of two immiscible liquids.

(249) "Sewage system" shall have the meaning specified in KRS 224.01-010.

(250) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the waste facility or activity.

(251) "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 BTU per pound of sludge treated on a wet-weight basis.

(252) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.

(253) "Small quantity generator" means a generator who generates more than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month.

(254) "Small quantity handler of universal waste" means a universal waste handler who does not accumulate more than 5,000 kilograms of universal waste (batteries, lamps, pesticides, or thermostats, collected collectively) at any time.

(255) "Solid waste management unit" shall mean any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at a facility at which solid wastes have been routinely and systematically released.

(256) "Solvent extraction operation" means an operation or method of separation in which a solid or solution is contacted with a liquid solvent (the two (2) being mutually insoluble) to preferentially dissolve and transfer one (1) or more components into the solvent.

(257) "Sorb" means to either adsorb, absorb, or both.

(258) "Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both.

(259) "Spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

(260) "Spill" means any accidental spilling, leaking, pumping, pouring, emitting, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes into or on any land or water.

(261) "Start-up" means the setting in operation of a hazardous waste management unit or control device for any purpose.

(262) "State" means any of the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands or Guam but does not include any foreign country.

(263) "Steam stripping operation" means a distillation operation in which vaporization of a volatile constituents of a liquid mixture takes place by the introduction of steam directly into the charge.

(264) "Storage facility" means a facility or part of a facility at which hazardous waste is held for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere. A generator who accumulates his own hazardous wastes in an approved manner for less than ninety (90) days for subsequent transport on site or off site is not operating or maintaining a storage facility.

(265) "Storage of hazardous waste" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

(266) "Storage" shall have the meaning specified in KRS 224.01-010.

(267) "Substantial business relationship" means the extent of a business relationship necessary to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" shall arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the cabinet.

(268) "Sudden accidental occurrence" means an occurrence which is not continuous or repeated in nature.

(269) "Sump" means any pit or reservoir that meets the definition of tank, and those troughs and trenches connected to it, that serves to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile administrative regulations, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(270) "Surface impoundment" means a facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(271) "Surge control tank" means a large-sized pipe or storage reservoir sufficient to contain the surging liquid discharge of the process tank to which it is connected.

(272) "Tangible net worth" means the tangible assets that remain after deducting liabilities; these assets would not include intangibles such as goodwill and rights to patents or royalties.

(273) "Tank" means a stationary device designed to contain an accumulation of hazardous waste that is constructed primarily of nonearthen materials (for example, wood, concrete, steel, or plastic) which provide structural support and which does not meet the definition of any other unit.

(274) "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

(275) "Termination" shall have the meaning specified in KRS 224.01-010.

(276) "The full amount of the liability coverage to be provided" means the amount of coverage for sudden and nonsudden occurrences required to be provided by the owner or operator, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(277) "Thermal treatment facility" means a facility or part of a facility which uses elevated temperatures as the primary means to change the chemical, physical or biological character or composition of hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge.

(278) "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge (see also "incinerator" and "open burning").

(279) "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of Section 4(3)(b) of 401 KAR 43:020 or Section 4(3)(b) of 401 KAR 43:030.

(280) "Thin-film evaporation operation" means a distillation operation that employs a heating surface consisting of a large diameter tube that may be either straight or tapered, horizontal or vertical. Liquid is spread on the tube wall by a rotating assembly of blades that maintain a close clearance from the wall or actually ride on the film of liquid on the wall.

(281) "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which acid is neutralized.

(282) "Transit country" means any foreign country, other than a receiving country, through which a hazardous waste is transported.

(283) "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body is a separate transport vehicle.

(284) "Transportation" shall have the meaning specified in KRS 224.01-010.

(285) "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway or water.

(286) "Treatability study" means:

(a) A study in which a hazardous waste is subjected to a treatment process to determine:

1. Whether the waste is amenable to the treatment process;
2. What pretreatment, if any, is required;

3. The optimal process conditions needed to achieve the desired treatment;

4. The efficiency of a treatment process for a specific waste or wastes; or

5. The characteristics and volumes of residuals from a particular treatment process.

(b) For the purpose of 401 KAR 31:010, Section 4(5) and (6), exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies.

(c) A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

(287) "Treatment facility" means a facility or part of a facility using any method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste nonhazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

(288) "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

(289) "Treatment" shall have the meaning specified in KRS 224.01-010.

(290) "Underground drinking water source" means:

(a) An aquifer supplying drinking water for human consumption; or

(b) An aquifer in which the groundwater contains less than 10,000 mg/l total dissolved solids.

(291) "Underground injection" means the subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well".)

(292) "Underground tank" means a device meeting the definition of "tank" in this section whose entire surface area is totally below the surface of and covered by the ground.

(293) "Underlying hazardous constituent" means any constituent listed in Section 1 of 401 KAR 37:040, Table - Treatment Standards for Hazardous Wastes, except vanadium and zinc, which can reasonably be expected to be present at the point of generation of the hazardous waste, at a concentration above the constituent-specific treatment standards.

(294) "Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

(295) "Universal waste" means any of the following hazardous wastes that are subject to the universal waste requirements of 401 KAR Chapter 43:

- (a) Batteries as described in Section 2 of 401 KAR 43:010;
- (b) Pesticides as described in Section 3 of 401 KAR 43:010;
- (c) Thermostats as described in Section 4 of 401 KAR 43:010;

and

- (d) Spent lamps as described in Section 5 of 401 KAR 43:010.

(296) "Universal waste handler":

(a) Means:

1. A generator of universal waste; or
2. The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(b) Does not mean:

1. A person who treats (except under the provisions of Sections 4(1) or (3) of 401 KAR 43:020 or Sections 4(1) or (3) of 401 KAR 43:030), disposes of, or recycles universal waste; or
2. A person engaged in the off-site transportation of universal

waste by air, rail, highway, or water, including a universal waste transfer facility.

(297) "Universal waste transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.

(298) "Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

(299) "Unsaturated zone" shall have the same meaning as "Zone of aeration".

(300) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(301) "Used oil" shall have the same meaning as KRS 224.50-545.

(302) "Used or reused" means a material that is either:

(a) Employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one (1) process used as feedstock in another process). However, a material shall not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

(b) Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

(303) "Vapor incinerator" means any enclosed combustion device that is used for destroying organic compounds and does not extract energy in the form of steam or process heat.

(304) "Vapor recovery system" means that equipment, device, or apparatus capable of collecting vapors and gases discharged from a storage tank, and a vapor processing system capable of affecting such vapors and gases so as to prevent their emission into the atmosphere.

(305) "Vapor-mounted seal" means a foam-filled primary seal mounted continuously around the circumference of the tank so that there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the hazardous waste surface, and the floating roof.

(306) "Vented" means discharged through an opening, typically an open-ended pipe or stack, allowing the passage of a stream of liquids, gases, or fumes into the atmosphere. The passage of liquids, gases, or fumes is caused by mechanical means such as compressors or vacuum-producing systems or by process-related means such as evaporation produced by heating and not caused by tank loading and unloading (work losses) or by natural means such as diurnal temperature changes.

(307) "Vessel" means any watercraft used or capable of being used as a means of transportation on the water.

(308) "Volatile organic concentration" or "VO concentration" means the fraction by weight of organic compounds in a hazardous waste expressed in terms of parts per million (ppmw) as determined by direct measurement using Method 25D or by knowledge of the waste in accordance with the requirements of Section 4 of 401 KAR 35:040.

(309) "Washout" means the carrying away of waste by waters as a result of flooding.

(310) "Waste boundary" means the outermost perimeter of the waste (projected in the horizontal plane) as it would exist at completion of the disposal activity.

(311) "Waste determination" means performing all applicable procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine whether a hazardous waste meets standards specified in 401 KAR Chapter 35. Examples of a waste

determination include performing the procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine the average VO concentration of a hazardous waste at the point of waste origination; the average VO concentration of a hazardous waste at the point of waste treatment and comparing the results to the exit concentration limit specified for the process used to treat the hazardous waste; determining the organic reduction efficiency and the organic biodegradation efficiency for a biological process used to treat a hazardous waste and comparing the results to the applicable standards; or the maximum volatile organic vapor pressure for a hazardous waste in a tank and comparing the results to the applicable standards.

(312) "Waste pile" shall have the same meaning as "pile".

(313) "Waste stabilization process" means any physical or chemical process used to either reduce the mobility of hazardous constituents in a hazardous waste or eliminate free liquids as determined by Test Method 9095 (Paint Filter Liquids Test) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW-846, Third Edition, September 1986, as amended by Update I, November 15, 1992 (incorporated by reference-refer to § 260.11 of this chapter). A waste stabilization process includes mixing the hazardous waste with binders or other materials, and curing the resulting hazardous waste and binder mixture. Other synonymous terms used to refer to this process are "waste fixation" or "waste solidification."

(314) "Waste" shall have the meaning specified in KRS 224.01-010.

(315) "Wastewaters" means wastes that contain less than one (1) percent by weight total organic carbon (TOC) and less than one (1) percent by weight total suspended solids (TSS), with the following exceptions:

(a) F001, F002, F003, F004, F005, wastewaters are solvent-water mixtures that contain less than one (1) percent by weight TOC or less than one (1) percent by weight total F001, F002, F003, F004, F005 solvent constituents listed in Section 1 of 401 KAR 37:040 in Table Treatment Standards for Hazardous Waste;

(b) K011, K013, K014 wastewaters contain less than five (5) percent by weight TOC and less than one (1) percent by weight TSS, as generated; and

(c) K103 and K104 wastewaters contain less than four (4) percent by weight TOC and less than one (1) percent by weight TSS.

(316) "Wastewater treatment unit" means a device that:

(a) Is part of a wastewater treatment facility that is subject to administrative regulation under either section 402 or 307(b) of the CWA;

(b) Receives and treats or stores an influent wastewater which is a hazardous waste as defined in 401 KAR 31:010, Section 3; or generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in 401 KAR 31:010, Section 3; or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Section 3 of 401 KAR 31:010; and

(c) Meets the definition of tank or tank system in this administrative regulation.

(317) "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

(318) "Water" or "waters of the Commonwealth" shall have the meaning specified in KRS 224.01-010.

(319) "Well" means any shaft or pit dug or bored into the earth, generally of cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(320) "Wetlands" means land that has a predominance of hydric soils and is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(321) "Zone of aeration" means that region of the soil or rock

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between the land surface and the nearest saturated zone in which the interstices are occupied partially by air.

(322) "Zone of engineering control" means an area under the control of the owner or operator that upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to waters of the Commonwealth.

(323) "Zone of saturation" means that part of the earth's crust containing groundwater in which all voids, large and small, are filled with liquid.

Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by context, acronyms and abbreviations used in 401 KAR Chapter 34 shall have the meaning as identified in Table 1 of this administrative regulation.

Table 1. Acronyms and Abbreviations.

Am.	Amended
C	Corrosive waste
CAA	Clean Air Act, as amended
CFR	Code of Federal Regulations
cm	Centimeter
cm ²	Centimeter squared
CO	Carbon monoxide
CO ₂	Carbon dioxide
CWA	Clean Water Act, as amended
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980
DOT	United States Department of Transportation
DRE	Destruction and removal efficiency
E	Explosive waste
eff.	Effective
EPA	United States Environmental Protection Agency
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act
FIA	Federal Insurance Administration
FR	Federal Register
H	Acutely hazardous waste
ha	Hectare
HTMR	High temperature metals recovery
HSWA	Hazardous and Solid Waste Amendments of 1994
I	Ignitable waste
KAR	Kentucky Administrative Regulation
kg	Kilogram
KPDES	Kentucky Pollution Discharge Elimination System
KRS	Kentucky Revised Statute
Ky.R.	Administrative Register of Kentucky
l	Liter
LC	Lethal concentration
LD	Lethal dose
ml	Milliliter
mm	Millimeter
N	Normal
NESHAPS	National Emissions Standards for Hazardous Air Pollutants
NPDES	National Pollutant and Discharge Elimination System
PCB	Polychlorinated biphenyl
pCi/l	Picocuries per liter
PHC	Principal hazardous constituent
Permit POHC	Permitted principal organic hazardous constituent
PM	Particulate matter
POHC	Principal organic hazardous constituent
ppm	parts per million
Trial POHC	Trial burn principal organic hazardous constituent

POTW	Publicly owned treatment works
PSD	Prevention of significant deterioration
psi	Pounds per square inch
psig	Pounds per square inch gauge
R	Reactive waste
RCRA	Resource Conservation and Recovery Act, as amended
SDWA	Safe Drinking Water Act, as amended
SEC	Securities and Exchange Commission
SIC	Standard Industrial Classification Code
SPCC	Spill Prevention, Control, and Countermeasures Plan
T	Toxic waste
UIC	Underground Injection Control
UICP	Underground Injection Control Program
USC	United States Code
U.S. EPA	United States Environmental Protection Agency
USGS	United States Geological Survey
USPS	United States Postal Service

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: This regulation does not affect any entities, because it only defines terms used in this chapter. The regulation was promulgated to comply with KRS 13A.222.

2. Direct and indirect costs or savings on the affected entities:
a. Effect on the cost of living and employment in the geographical

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area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The cabinet will experience no additional costs or savings by promulgating the amendments to this regulation.

2. Continuing costs or savings: No requirements have been imposed to affect costs and savings.

3. Additional factors increasing or decreasing costs: There will be no additional factors affecting costs.

b. Reporting and paperwork requirements: There will be no extra paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on the state and local revenue with the promulgation of this regulation.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No costs are imposed with the promulgation of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: There were no other alternatives.

8. Assessment of expected benefits of the administrative regulation: The benefit is having the definitions clearly stated at the beginning of each chapter.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Not applicable since no requirements are imposed.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of hazardous waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS

Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments establish definitions of hazardous waste terms and the clarification of certain definitions. This regulation is necessary to maintain consistency between state and federal programs. In addition, the regulation has been modified to reflect regulation construction specified in KRS 13A.222.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that manages hazardous waste.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. This administrative regulation establishes definitions for all terms within 401 KAR Chapter 34. These terms are assimilated from existing federal state and regulatory definitions and existing statutory definitions where applicable.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): Because this administrative regulation only establishes definitions for 401 KAR Chapter 34, this administrative regulation will not affect state, county, or local expenditures.

Other Explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (New Administrative Regulation)

401 KAR 34:245. Containment buildings.

RELATES TO: KRS 224.01, 224.10, 224.46, 40 CFR Part 264 Subpart DD

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520, 224.46-530

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-520 and 224.46-530 and to establish minimum standards for containment buildings.

Section 1. Applicability. The requirements of this administrative

regulation apply to owners or operators who store or treat hazardous waste in units designed and operated under Section 2 of this administrative regulation. These provisions shall become effective on the effective date of this administrative regulation, although the owner or operator may notify the cabinet of their intent to be bound by this administrative regulation at an earlier time. The owner or operator is not subject to the definition of land disposal in KRS 224.01-010 provided that the unit:

(1) Is a completely enclosed, self-supporting structure that is designed and constructed of manmade materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the unit, and to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed; climatic conditions; and the stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls;

(2) Has a primary barrier that is designed to be sufficiently durable to withstand the movement of personnel, wastes, and handling equipment within the unit;

(3) If the unit is used to manage liquids, has:

(a) A primary barrier designed and constructed of materials to prevent migration of hazardous constituents into the barrier;

(b) A liquid collection system designed and constructed of materials to minimize the accumulation of liquid on the primary barrier; and

(c) A secondary containment system designed and constructed of materials to prevent migration of hazardous constituents into the barrier, with a leak detection and liquid collection system capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest practicable time, unless the unit has been granted a variance from the secondary containment system requirements under Section 2(2)(d) of this administrative regulation;

(4) Has controls sufficient to prevent fugitive dust emissions to meet the no visible emission standard in Section 2(3)(a)4 of this administrative regulation; and

(5) Is designed and operated to ensure containment and prevent the migration of materials from the unit by personnel or equipment.

Section 2. Design and Operating Standards. (1) All containment buildings shall comply with the following design standards:

(a) The containment building shall be completely enclosed with a floor, walls, and a roof to prevent exposure to the elements, (for example, precipitation, wind, run-on), and to assure containment of managed wastes.

(b) The floor and containment walls of the unit, including the secondary containment system if required under subsection (2) of this section, shall be designed and constructed of materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the unit, and to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed; climatic conditions; and the stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls. The unit shall be designed so that it has sufficient structural strength to prevent collapse or other failure. All surfaces to be in contact with hazardous wastes shall be chemically compatible with those wastes. The cabinet will consider standards established by professional organizations generally recognized by the industry such as the American Concrete Institute (ACI) and the American Society of Testing Materials (ASTM) in judging the structural integrity requirements of this subsection. If appropriate to the nature of the waste management operation to take place in the unit, an exception to the structural strength requirement may be made for light-weight doors and windows that meet these criteria:

1. They provide an effective barrier against fugitive dust emis-

sions under subsection (3)(a)4 of this section; and

2. The unit is designed and operated in a fashion that assures that wastes will not actually come in contact with these openings.

(c) Incompatible hazardous wastes or treatment reagents shall not be placed in the unit or its secondary containment system if they may cause the unit or secondary containment system to leak, corrode, or otherwise fail.

(d) A containment building shall have a primary barrier designed to withstand the movement of personnel, waste, and handling equipment in the unit during the operating life of the unit and appropriate for the physical and chemical characteristics of the waste to be managed.

(2) For a containment building used to manage hazardous wastes containing free liquids or treated with free liquids (the presence of which is determined by Paint Filter Liquids Test (as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," EPA Publication No. SW-846, incorporated in 40 CFR 260.11, which is adopted in Section 3 of 401 KAR 30:010), a visual examination, or other appropriate means), the owner or operator shall include:

(a) A primary barrier designed and constructed of materials to prevent the migration of hazardous constituents into the barrier (for example, a geomembrane covered by a concrete wear surface).

(b) A liquid collection and removal system to minimize the accumulation of liquid on the primary barrier of the containment building:

1. The primary barrier shall be sloped to drain liquids to the associated collection system; and

2. Liquids and waste shall be collected and removed to minimize hydraulic head on the containment system at the earliest practicable time.

(c) A secondary containment system including a secondary barrier designed and constructed to prevent migration of hazardous constituents into the barrier, and a leak detection system that is capable of detecting failure of the primary barrier and collecting accumulated hazardous wastes and liquids at the earliest practicable time.

1. The requirements of the leak detection component of the secondary containment system are satisfied by installation of a system that is, at a minimum:

a. Constructed with a bottom slope of 1 percent or more; and

b. Constructed of a granular drainage material with a hydraulic conductivity of 1×10^{-2} cm/sec or more and a thickness of 12 inches (30.5 cm) or more, or constructed of synthetic or geonet drainage materials with a transmissivity of 3×10^{-5} m²/sec or more.

2. If treatment is to be conducted in the building, an area in which such treatment will be conducted shall be designed to prevent the release of liquids, wet materials, or liquid aerosols to other portions of the building.

3. The secondary containment system shall be constructed of materials that are chemically resistant to the waste and liquids managed in the containment building and of sufficient strength and thickness to prevent collapse under the pressure exerted by overlaying materials and by any equipment used in the containment building. (Containment buildings can serve as secondary containment systems for tanks placed within the building under certain conditions. A containment building can serve as an external liner system for a tank, provided it meets the requirements of Section 4(4)(a) of 401 KAR 34:190. In addition, the containment building shall meet the requirements of Section 4(2) and (3)(a) and (b) of 401 KAR 34:190 to be considered an acceptable secondary containment system for a tank.)

(d) For existing units other than ninety (90) day generator units, the cabinet may delay the secondary containment requirement for up to two (2) years, based on a demonstration by the owner or operator that the unit substantially meets the standards of this administrative regulation. In making this demonstration, the owner or operator shall:

1. Provide written notice to the cabinet of their request within 90 days of the effective date of this administrative regulation. This notification shall describe the unit and its operating practices with

specific reference to the performance of existing containment systems, and specific plans for retrofitting the unit with secondary containment;

2. Respond to any comments from the cabinet on these plans within thirty (30) days; and

3. Fulfill the terms of the revised plans, if such plans are approved by the cabinet.

(3) Owners or operators of all containment buildings shall:

(a) Use controls and practices to ensure containment of the hazardous waste within the unit; and, at a minimum:

1. Maintain the primary barrier to be free of significant cracks, gaps, corrosion, or other deterioration that may cause hazardous waste to be released from the primary barrier;

2. Maintain the level of the stored or treated hazardous waste within the containment walls of the unit so that the height of any containment wall is not exceeded;

3. Take measures to prevent the tracking of hazardous waste out of the unit by personnel or by equipment used in handling the waste. An area shall be designated to decontaminate equipment and any rinsate shall be collected and properly managed; and

4. Take measures to control fugitive dust emissions such that Any openings (doors, windows, vents, cracks, etc.) exhibit no visible emissions (see 40 CFR Part 60, Appendix A, Method 22-Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares, incorporated by reference in 401 KAR 50:015, Section 1(1)(c)(1)qq.). In addition, all associated particulate collection devices (for example, fabric filter, electrostatic precipitator) shall be operated and maintained with sound air pollution control practices. This state of no visible emissions shall be maintained effectively at all times during routine operating and maintenance conditions, including when vehicles and personnel are entering and exiting the unit.

(b) Obtain certification by a qualified registered professional engineer that the containment building design meets the requirements of subsections (1) through (3) of this section. For units placed into operation prior to the effective date of this administrative regulation, this certification shall be placed in the facility's operating record (on-site files for generators who are not formally required to have operating records) no later than sixty (60) days after the date of initial operation of the unit. After the effective date of this administrative regulation, professional engineer certification will be required prior to operation of the unit.

(c) Throughout the active life of the containment building, if the owner or operator detects a condition that may lead to or has caused a release of hazardous waste, shall repair the condition promptly, in accordance with the following procedures.

1. Upon detection of a condition that has lead to a release of hazardous waste (for example, upon detection of leakage from the primary barrier) the owner or operator shall:

a. Enter a record of the discovery in the facility operating record;

b. Immediately remove the portion of the containment building affected by the condition from service;

c. Determine what steps shall be taken to repair the containment building, remove any leakage from the secondary collection system, and establish a schedule for accomplishing the cleanup and repairs; and

d. Within seven (7) days after the discovery of the condition, notify the cabinet of the condition, and within fourteen (14) working days, provide a written notice to the cabinet with a description of the steps taken to repair the containment building, and the schedule for accomplishing the work.

2. The cabinet will review the information submitted, make a determination regarding whether the containment building shall be removed from service completely or partially until repairs and cleanup are complete, and notify the owner or operator of the determination and the underlying rationale in writing.

3. Upon completing all repairs and cleanup the owner or operator

shall notify the cabinet in writing and provide a verification, signed by a qualified, registered professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with subsection (3)(c)1d of this section.

(d) Inspect and record in the facility's operating record, at least once every seven (7) days, data gathered from monitoring equipment and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste.

(4) For containment buildings that contain areas both with and without secondary containment, the owner or operator shall:

(a) Design and operate each area in accordance with the requirements enumerated in subsections (1) through (3) of this section;

(b) Take measures to prevent the release of liquids or wet materials into areas without secondary containment; and

(c) Maintain in the facility's operating log a written description of the operating procedures used to maintain the integrity of areas without secondary containment.

(5) The cabinet may waive requirements for secondary containment for a permitted containment building where the owner operator demonstrates that the only free liquids in the unit are limited amounts of dust suppression liquids required to meet occupational health and safety requirements, and where containment of managed wastes and liquids can be assured without a secondary containment system.

Section 3. Closure and Postclosure Care. (1) At closure of a containment building, the owner or operator shall remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless Section 3(4) of 401 KAR 31:010 applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for containment buildings shall meet all of the requirements specified in 401 KAR 34:070 and 34:080.

(2) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in subsection (1) of this section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he shall close the facility and perform postclosure care in accordance with the closure and postclosure requirements of Section 6 of 401 KAR 34:230 that apply to landfills. In addition, for the purposes of closure, postclosure, and financial responsibility, such a containment building is then considered to be a landfill, and the owner or operator shall meet all of the requirements for landfills specified in 401 KAR 34:070 and 34:080.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale

no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed regulation affects owners and operators that store or treat hazardous waste in containment buildings.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The existing staff will have an increase in workloads in order to process the newly regulated entities.

2. Continuing costs or savings: Once the newly regulated entities are processed, there will be no extra work.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs.

b. Reporting and paperwork requirements: There are no extra reporting or paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state or local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants are anticipated to be used for the implementation and enforcement of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were not considered. This administrative regulation is consistent with existing federal standards.

8. Assessment of expected benefits of the administrative regulation: This administrative regulation will provide consistent with existing federal standards.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: The implementation of this regulation will improve the public health and environmental welfare across the commonwealth.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Yes, detrimental effects could occur without the implementation of this regulation.

c. If detrimental effect would result, explain detrimental effect: Hazardous waste facilities using containment buildings that do not meet these standards could cause harm to public health and the environment.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, duplicate, or overlap this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Yes, tiering was used. The administrative regulation affects owners and operators of containment buildings consistent with federal standards, to protect human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed regulation adopts changes that apply to hazardous waste containment buildings. The adoption of this regulation is necessary to maintain consistency with state and federal programs. The regulation clarifies the applicability of containment building uses. This regulation covers containment building applicability, design and operating standards, and closure and postclosure care. The regulation has been modified to reflect the requirements of regulation construction specified in KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that stores or treats hazardous waste in containment buildings.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of

all water, land, and air pollution. KRS 224 Subchapter 46 requires that the cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(New Administrative Regulation)**

401 KAR 34:281. Air emission standards for tanks, surface impoundments, and containers.

RELATES TO: KRS 224.01, 224.10, 224.46, 40 CFR Part 264 Subpart AA

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520, 224.46-530

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-520 and 224.46-530 and to establish air emissions standards for tanks, surface impoundments, and containers.

Section 1. Applicability. (1) The requirements of this administrative regulation apply to owners and operators of all facilities that treat, store, or dispose of hazardous waste in tanks, surface impoundments, or containers subject to either 401 KAR 34:180, 34:190, or 34:200 except as Section 1 of 401 KAR 34:010 and subsection (2) of this section provide otherwise.

(2) The requirements of this administrative regulation do not apply to the following hazardous waste management units at the facility:

(a) A hazardous waste management unit that holds hazardous waste placed in the unit before June 6, 1995, and in which no hazardous waste is added to the unit on or after this date.

(b) A container that has a design capacity less than or equal to 0.1 m³ (26.4 gallons).

(c) A tank in which an owner or operator has stopped adding hazardous waste and the owner or operator has begun implementing or completed closure of the tank pursuant to an approved closure plan.

(d) A surface impoundment in which an owner or operator has stopped adding hazardous waste (except to implement an approved closure plan) and the owner or operator has begun implementing or completed closure of the surface impoundment pursuant to an approved closure plan.

(e) A hazardous waste management unit that is used solely for on-site treatment or storage of hazardous waste that is generated as the result of implementing remedial activities required under the corrective action authorities of KRS 224.01-400, or KRS 224.46-530.

(f) A hazardous waste management unit that is used solely for the management of radioactive mixed waste in accordance with all applicable regulations under the authority of the Atomic Energy Act and the Nuclear Waste Policy Act.

(3) For the owner and operator of a facility subject to this

administrative regulation and who received a final permit under KRS 224.46-520 prior to June 6, 1995, the requirements of this administrative regulation shall be incorporated into the permit when the permit is reissued in accordance with the requirements of Section 12 of 401 KAR 38:050 or reviewed in accordance with the requirements of Section 5(4) of 401 KAR 38:040. Until such date when the owner and operator receives a final permit incorporating the requirements of this administrative regulation, the owner and operator is subject to the requirements of 401 KAR 35:281.

(4) The requirements of this administrative regulation, except for the recordkeeping requirements specified in Section 9(9) of this administrative regulation, shall not apply to a tank or container used for the management of hazardous waste generated by organic peroxide manufacturing and its associated laboratory operations when the owner or operator of the unit meets all of the following conditions:

(a) The owner or operator identifies that the tank or container receives hazardous waste generated by an organic peroxide manufacturing process producing more than one functional family of organic peroxides or multiple organic peroxides within one functional family, that one or more of these organic peroxides, could potentially undergo self-accelerating thermal decomposition at or below ambient temperatures, and that organic peroxides are the predominant products manufactured by the process. For the purpose of meeting the conditions of this paragraph, "organic peroxide" means an organic compound that contains the bivalent -O-O- structure and which may be considered to be a structural derivative of hydrogen peroxide where one or both of the hydrogen atoms has been replaced by an organic radical.

(b) The owner or operator prepares documentation, in accordance with the requirements of Section 9(9) of this administrative regulation, explaining why and undue safety hazard would be created if air emission controls specified in Sections 4, 6, and 7 of this administrative regulation are installed and operated on the tanks and containers used at the facility to manage the hazardous waste generated by the organic peroxide manufacturing process or processes meeting the conditions of paragraph (a) of this subsection.

(c) The owner or operator notifies the cabinet in writing that hazardous waste generated by an organic peroxide manufacturing process or processes meeting the conditions of paragraph (a) of this subsection are managed at the facility in tanks or containers meeting the conditions of paragraph (b) of this subsection. The notification shall state the name and address of the facility, and be signed and dated by an authorized representative of the facility owner or operator.

(5) For the purposes of this administrative regulation, the abbreviations in parentheses apply to equations used in 401 KAR 35:281.

Section 2. Standards: General. (1) This section applies to the management of hazardous waste in tanks, surface impoundments, and containers subject to this administrative regulation.

(2) The owner or operator shall control air emissions from each hazardous waste management unit in accordance with standards specified in Sections 4 through 7 of this administrative regulation, as applicable to the hazardous waste management unit, except as provided for in subsection (3) of this section.

(3) A hazardous waste management unit is exempted from standards specified in Section 4 through 7 of this administrative regulation provided that all hazardous waste placed in the hazardous waste management unit is determined by the owner or operator to meet either of the following conditions:

(a) The average volatile organic (VO) concentration of the hazardous waste at the point of waste origination is less than 100 parts per million by weight (ppmw). The average VO concentration shall be determined by the procedures specified in Section 3(1) of this administrative regulation.

(b) The organic content of the hazardous waste has been

reduced by an organic destruction or removal process that achieves any one of the following conditions:

1. A process that removes or destroys the organics contained in the hazardous waste to a level such that the average VO concentration of the hazardous waste at the point of waste treatment is less than the exit concentration limit (C_T) established for the process. The average VO concentration of the hazardous waste at the point of waste treatment and the exit concentration limit for the process shall be determined using the procedures specified in Section 3(2) of this administrative regulation.

2. A process that removes or destroys the organics contained in the hazardous waste to a level such that the organic reduction efficiency (R) for the process is equal to or greater than 95 percent, and the average VO concentration of the hazardous waste at the point of waste treatment is less than 50 ppmw. The organic reduction efficiency for the process and the average VO concentration of the hazardous waste at the point of waste treatment shall be determined using the procedures specified in Section 3(2) of this administrative regulation.

3. A process that removes or destroys the organics contained in the hazardous waste to a level such that the actual organic mass removal rate (MR) for the process is greater than the required organic mass removal rate (RMR) established for the process. The required organic mass removal rate and the actual organic mass removal rate for the process shall be determined using the procedures specified in Section 3(2) of this administrative regulation.

4. A biological process that destroys or degrades the organics contained in the hazardous waste, such that either of the following conditions is met:

a. The organic reduction efficiency (R) for the process is equal to or greater than 95 percent, and the organic biodegradation efficiency (R_{bio}) for the process is equal to or greater than ninety-five (95) percent. The organic reduction efficiency and the organic biodegradation efficiency for the process shall be determined in accordance with the procedures specified in Section 3(2) of this administrative regulation.

b. The total actual organic mass biodegradation rate (MR_{bio}) for all hazardous waste treated by the process is equal to or greater than the required organic mass removal rate (RMR). The required organic mass removal rate and the actual organic mass biodegradation rate for the process shall be determined using the procedures specified in Section 3(2) of this administrative regulation.

5. A process that removes or destroys the organics contained in the hazardous waste and meets all of the following conditions:

a. All of the materials entering the process are hazardous wastes.

b. From the point of waste origination through the point where the hazardous waste enters the process, the hazardous waste is continuously managed in hazardous waste management units that use air emission controls in accordance with the standards specified in Section 4 through 7 of this administrative regulation, as applicable to the hazardous waste management unit.

c. The average VO concentration of the hazardous waste at the point of waste treatment is less than the lowest average VO concentration at the point of waste origination determined for each of the individual hazardous waste streams entering the process or 100 ppmw, whichever value is lower. The average VO concentration of each individual hazardous waste stream at the point of waste origination shall be determined using the procedure specified in Section 3(1) of this administrative regulation. The average VO concentration of the hazardous waste at the point of waste treatment shall be determined using the procedure specified in Section 3(2) of this administrative regulation.

6. A hazardous waste incinerator for which the owner or operator has either:

a. Been issued a final permit under 401 KAR Chapter 38, and designs and operates the unit in accordance with the requirements of 401 KAR 34:240; or

b. Has certified compliance with the interim status requirements of 401 KAR 35:240.

7. A boiler or industrial furnace for which the owner or operator has either:

a. Been issued a final permit under 401 KAR Chapter 38, and designs and operates the unit in accordance with the requirements of 401 KAR 36:020 and 36:025; or

b. Has certified compliance with the interim status requirements of 401 KAR 36:020.

(4) When a process is used for the purpose of treating a hazardous waste to meet one of the sets of conditions specified in subsections (3)(b)1 through 5 of this section, each material removed from or exiting the process that is not a hazardous waste but has an average VO concentration equal to or greater than 100 ppmw shall be managed in a hazardous waste management unit in accordance with the requirements of subsection (2) of this section.

(5) The cabinet may at any time perform or request that the owner or operator perform a waste determination for a hazardous waste managed in a tank, surface impoundment, or container exempted from using air emission controls under the provisions of this section as follows:

(a) The waste determination for average VO concentration of a hazardous waste at the point of waste origination shall be performed using direct measurement in accordance with the applicable requirements of Section 3(1) of this administrative regulation. The waste determination for a hazardous waste at the point of waste treatment shall be performed in accordance with the applicable requirements of Section 3(2) of this administrative regulation.

(b) In a case when the owner or operator is requested to perform the waste determination, the cabinet may elect to have an authorized representative observe the collection of the hazardous waste samples used for the analysis.

(c) In a case when the results of the waste determination performed or requested by the cabinet do not agree with the results of a waste determination performed by the owner or operator using knowledge of the waste, then the results of the waste determination performed in accordance with the requirements of paragraph (a) of this subsection shall be used to establish compliance with the requirements of this administrative regulation.

(d) In a case when the owner or operator has used an averaging period greater than 1 hour for determining the average VO concentration of a hazardous waste at the point of waste origination, the cabinet may elect to establish compliance with this administrative regulation by performing or requesting that the owner or operator perform a waste determination using direct measurement based on waste samples collected within a 1-hour period as follows:

1. The average VO concentration of the hazardous waste at the point of waste origination shall be determined by direct measurement in accordance with the requirements of Section 3(1) of this administrative regulation.

2. Results of the waste determination performed or requested by the cabinet showing that the average VO concentration of the hazardous waste at the point of waste origination is equal to or greater than 100 ppmw shall constitute noncompliance with this administrative regulation except in a case as provided for in subparagraph 3 of this paragraph.

3. For the case when the average VO concentration of the hazardous waste at the point of waste origination previously has been determined by the owner or operator using an averaging period greater than one (1) hour to be less than 100 ppmw but because of normal operating process variations the VO concentration of the hazardous waste determined by direct measurement for any given one (1) hour period may be equal to or greater than 100 ppmw, information that was used by the owner or operator to determine the average VO concentration of the hazardous waste (for example, test results, measurements, calculations, and other documentation) and recorded in the facility records in accordance with the requirements

of Sections 3(1) and 9 of this administrative regulation shall be considered by the cabinet together with the results of the waste determination performed or requested by the cabinet in establishing compliance with this administrative regulation.

Section 3. Waste Determination Procedures. (1) Waste determination procedure for average (VO) concentration of a hazardous waste at the point of waste origination.

(a) An owner or operator shall determine the average VO concentration at the point of waste origination for each hazardous waste placed in hazardous waste management units exempted under the provisions of Section 2(3)(a) of this administrative regulation from using air emission controls in accordance with standards specified in Sections 4 through 7 of this administrative regulation, as applicable to the hazardous waste management unit.

(b) The VO concentration at the point of waste origination for a hazardous waste shall be determined in accordance with the procedures specified in Sections 4(1)(b) through 4(1)(f) of 401 KAR 35:281.

(2) Waste determination procedures for treated hazardous waste.

(a) An owner or operator shall perform the applicable waste determinations for each treated hazardous waste placed in hazardous waste management units exempted under the provisions of Section 2(3)(b) of this administrative regulation from using air emission controls in accordance with standards specified in Sections 4 through 7 of this administrative regulation, as applicable to the hazardous waste management unit.

(b) The waste determination for a treated hazardous waste shall be performed in accordance with the procedures specified in Section 4(2)(b) through 4(2)(j) of 401 KAR 35:281, as applicable to the treated hazardous waste.

(3) Procedure to determine the maximum organic vapor pressure of a hazardous waste in a tank.

(a) An owner or operator shall determine the maximum organic vapor pressure for each hazardous waste placed in tanks using air emission controls in accordance with standards specified in Section 4(3) of this administrative regulation.

(b) The maximum organic vapor pressure of the hazardous waste shall be determined in accordance with the procedures specified in Section 4(3)(b) through 4(3)(d).

Section 4. Standards: Tanks. (1) This section applies to owners and operators of tanks subject to this administrative regulation into which any hazardous waste is placed except for the following tanks:

(a) A tank in which all hazardous waste entering the tank meets the conditions specified in Section 2(3) of this administrative regulation; or

(b) A tank used for biological treatment of hazardous waste in accordance with the requirements of Section 2(3)(b)4 of this administrative regulation.

(2) The owner or operator shall place the hazardous waste into one of the following tanks:

(a) A tank equipped with a cover (for example, a fixed roof) that is vented through a closed-vent system to a control device in accordance with the requirements specified in subsection (4) of this section;

(b) A tank equipped with a fixed roof and internal floating roof in accordance with the requirements of Section 11 of this administrative regulation;

(c) A tank equipped with an external floating roof in accordance with the requirements of Section 11 of this administrative regulation; or

(d) A pressure tank that is designed to operate as a closed system such that the tank operates with no detectable organic emissions at all times that hazardous waste is in the tank except as provided for in subsection (7) of this section.

(3) As an alternative to complying with subsection (2) of this

section, an owner or operator may place hazardous waste in a tank equipped with a cover (for example, a fixed roof) meeting the requirements specified in subsection (4)(a) of this section when the hazardous waste is determined to meet all of the following conditions:

(a) The hazardous waste is neither mixed, stirred, agitated, nor circulated within the tank by the owner or operator using a process that results in splashing, frothing, or visible turbulent flow on the waste surface during normal process operations;

(b) The hazardous waste in the tank is not heated by the owner or operator except during conditions requiring that the waste be heated to prevent the waste from freezing or to maintain adequate waste flow conditions for continuing normal process operations;

(c) The hazardous waste in the tank is not treated by the owner or operator using a waste stabilization process or a process that produces an exothermic reaction; and

(d) The maximum organic vapor pressure of the hazardous waste in the tank as determined using the procedure specified in Section 3(3) of this administrative regulation is less than the following applicable value:

1. If the tank design capacity is equal to or greater than 151 m³ (39,893 gallons), then the maximum organic vapor pressure shall be less than five and two-tenths (5.2) kPa (guage);

2. If the tank design capacity is equal to or greater than seventy-five (75) m³ (19,814 gallons) but less than 151 m³, then the maximum organic vapor pressure shall be less than twenty-seven and six-tenths (27.6) kPa (guage); or

3. If the tank design capacity is less than seventy-five (75) m³ (19,814 gallons), then the maximum organic vapor pressure shall be less than seventy-six and six-tenths (76.6) kPa (guage).

(4) To comply with subsection (2)(a) of this section, the owner or operator shall design, install, operate, and maintain a cover that vents the organic vapors emitted from hazardous waste in the tank through a closed-vent system connected to a control device.

(a) The cover shall be designed and operated to meet the following requirements:

1. The cover and all cover openings (for example, access hatches, sampling ports, and gauge wells) shall be designed to operate with no detectable organic emissions when all cover openings are secured in a closed, sealed position.

2. Each cover opening shall be secured in a closed, sealed position (for example, covered by a gasketed lid or cap) at all times that hazardous waste is in the tank except as provided for in subsection (6) of this section.

(b) The closed-vent system and control device shall be designed and operated in accordance with the requirements of Section 7 of this administrative regulation.

(5) The owner and operator shall install, operate, and maintain enclosed pipes or other closed-systems, the cabinet considers a drain system that meets the requirements of 40 CFR 61.346(a)(1) or 40 CFR 61.346(b)(1) through (b)(3) to be a "closed systems", to:

(a) Transfer all hazardous waste to the tank from another tank, surface impoundment, or container subject to this administrative regulation except for those hazardous wastes that meet the conditions specified in Section 2(3) of this administrative regulation; and

(b) Transfer all hazardous waste from the tank to another tank, surface impoundment, or container subject to this administrative regulation except for those hazardous wastes that meet the conditions specified in Section 2(3) of this administrative regulation.

(6) Each cover opening shall be secured in a closed, sealed position (for example, covered by a gasketed lid) at all times that hazardous waste is in the tank except when it is necessary to use the cover opening to:

(a) Add, remove, inspect, or sample the material in the tank;

(b) Inspect, maintain, repair, or replace equipment located inside the tank; or

(c) Vent gases or vapors from the tank to a closed-vent system connected to a control device that is designed and operated in

accordance with the requirements of Section 7 of this administrative regulation.

(7) One (1) or more safety devices that vent directly to the atmosphere may be used on the tank, cover, closed-vent system, or control device provided each safety device meets all of the following conditions:

(a) The safety device is not used for planned or routine venting of organic vapors from the tank or closed-vent system connected to a control device; and

(b) The safety device remains in a closed, sealed position at all times except when an unplanned event requires that the device open for the purpose of preventing physical damage or permanent deformation of the tank, cover, closed-vent system, or control device in accordance with good engineering and safety practices for handling flammable, combustible, explosive, or other hazardous materials. An example of an unplanned event is a sudden power outage.

Section 5. Standards: Surface Impoundments. (1) This section applies to owners and operators of surface impoundments subject to this administrative regulation into which any hazardous waste is placed except for the following surface impoundments:

(a) A surface impoundment in which all hazardous waste entering the surface impoundment meets the conditions specified in Section 2(3) of this administrative regulation; or

(b) A surface impoundment used for biological treatment of hazardous waste in accordance with the requirements of Section 2(3)(b)4. of this administrative regulation.

(2) The owner or operator shall place the hazardous waste into a surface impoundment equipped with a cover (for example, an air-supported structure or a rigid cover) that is vented through a closed-vent system to a control device meeting the requirements specified in subsection (4) of this section.

(3) As an alternative to complying with subsection (2) of this section, an owner or operator may place hazardous waste in a surface impoundment equipped with a floating membrane cover meeting the requirements specified in subsection (5) of this section when the hazardous waste is determined to meet all of the following conditions:

(a) The hazardous waste is neither mixed, stirred, agitated, nor circulated within the surface impoundment by the owner or operator using a process that results in splashing, frothing, or visible turbulent flow on the waste surface during normal process operations;

(b) The hazardous waste in the surface impoundment is not heated by the owner or operator; and

(c) The hazardous waste is not treated by the owner or operator using a waste stabilization process or a process that produces an exothermic reaction.

(4) To comply with subsection (2) of this section, the owner or operator shall design, install, operate, and maintain a cover that vents the organic vapors emitted from hazardous waste in the surface impoundment through a closed-vent system connected to a control device.

(a) The cover shall be designed and operated to meet the following requirements:

1. The cover and all cover openings (for example, access hatches, sampling ports, and gauge wells) shall be designed to operate with no detectable organic emissions when all cover openings are secured in a closed, sealed position.

2. Each cover opening shall be secured in the closed, sealed position (for example, covered by a gasketed lid or cap) at all times that hazardous waste is in the surface impoundment except as provided for in subsection (7) of this section.

3. The closed-vent system and control device shall be designed and operated in accordance with Section 7 of this administrative regulation.

(5) To comply with subsection (3) of this section, the owner or operator shall design, install, operate, and maintain a floating

membrane cover that meets all of the requirements specified in Section 6(5)(a) through (d) of 401 KAR 35:281.

(6) The owner or operator shall install, operate, and maintain enclosed pipes or other closed-systems, the cabinet considers a drain system that meets the requirements of 40 CFR 61.346(a)(1) or 40 CFR 61.346(b)(1) through (b)(3) to be a "closed system", to:

(a) Transfer all hazardous waste to the surface impoundment from another tank, surface impoundment, or container subject to this administrative regulation except for those hazardous wastes that meet the conditions specified in Section 2(3) of this administrative regulation; and

(b) Transfer all hazardous waste from the surface impoundment to another tank, surface impoundment, or container subject to this administrative regulation except for those hazardous wastes that meet the conditions specified in Section 2(3) of this administrative regulation.

(7) Each cover opening shall be secured in the closed, sealed position (for example, a cover by a gasketed lid or cap) at all times that hazardous waste is in the surface impoundment except when it is necessary to use the cover opening to:

(a) Add, remove, inspect, or sample the material in the surface impoundment;

(b) Inspect, maintain, repair, or replace equipment located underneath the cover;

(c) Remove treatment residues from the surface impoundment in accordance with the requirements of Section 4 of 401 KAR 37:010; or

(d) Vent gases or vapors from the surface impoundment to a closed-vent system connected to a control device that is designed and operated in accordance with the requirements of Section 7 of this administrative regulation.

(8) One (1) or more safety devices that vent directly to the atmosphere may be installed on the cover, closed-vent system, or control device provided each device meets all of the following conditions:

(a) The safety device is not used for planned or routine venting of organic vapors from the surface impoundment or the closed-vent system connected to a control device; and

(b) The safety device remains in a closed, sealed position at all times except when an unplanned event requires that the device open for the purpose of preventing physical damage or permanent deformation of the cover, closed-vent system, or control device in accordance with good engineering and safety practices for handling flammable, combustible, explosive, or other hazardous materials. An example of an unplanned event is a sudden power outage.

Section 6. Standards: Containers. (1) This section applies to the owners and operators of containers having design capacities greater than 0.1 m³ (26.4 gallons) subject to this administrative regulation into which any hazardous waste is placed except for a container in which all hazardous waste entering the container meets the conditions specified in Section 2(3) of this administrative regulation.

(2) An owner or operator shall manage hazardous waste in containers using the following procedures:

(a) The owner or operator shall place the hazardous waste into one of the following containers except when a container is used for hazardous waste treatment as required by paragraph (b) of this subsection:

1. A container that is equipped with a cover that operates with no detectable organic emissions when all container openings (for example, lids, bungs, hatches, and sampling ports) are secured in a closed, sealed position. The owner or operator shall determine that a container operates with no detectable emissions by testing each opening on the container for leaks in accordance with Method 21 in 40 CFR Chapter 60, Appendix A the first time any portion of the hazardous waste is placed into the container. If a leak is detected and cannot be repaired immediately, the hazardous waste shall be

removed from the container and the container not used to meet the requirements of this subsection until the leak is repaired and the container is retested.

2. A container having a design capacity less than or equal to 0.46 m³ (121.5 gallons) that is equipped with a cover and complies with all applicable Department of Transportation regulations on packaging hazardous waste for transport under 49 CFR Subpart C.

a. A container that is managed in accordance with the requirements of 49 CFR Subpart C for the purpose of complying with this administrative regulation is not subject to any exceptions to the 49 CFR Subpart C regulations, except as noted in paragraph (a)2.b. of this subsection.

b. A lab pack that is managed in accordance with the requirements of 49 CFR Subpart C for the purpose of complying with this administrative regulation may comply with the exceptions for combination packagings specified in 49 CFR Subpart C.

3. A container that is attached to or forms a part of any truck, trailer, or railcar; and that has been demonstrated within the preceding 12 months to be organic vapor tight when all container openings are in a closed, sealed position (for example, the container hatches or lids are gasketed and latched). For the purpose of meeting the requirements of this subsection, a container is organic vapor tight if the container sustains a pressure change of not more than 750 pascals (0.11 psi) within 5 minutes after it is pressurized to a minimum of 4,500 pascals (0.65 psi). This condition is to be demonstrated using the pressure test specified in Method 27 of 40 CFR Part 60, Appendix A, and a pressure measurement device that has a precision of ± 2.5 mm water and that is capable of measuring above the pressure at which the container is to be tested for vapor tightness.

(b) An owner or operator treating hazardous waste in a container by either a waste stabilization process, any process that requires the addition of heat to the waste, or any process that produces an exothermic reaction shall meet the following requirements:

1. Whenever it is necessary for the container to be open during the treatment process, the container shall be located inside an enclosure that is vented through a closed-vent system to a control device.

2. The enclosure shall be a structure that is designed and operated in accordance with the following requirements:

a. The enclosure shall be a structure that is designed and operated with sufficient airflow into the structure to capture the organic vapors emitted from the hazardous waste in the container and vent the vapors through the closed-vent system to the control device.

b. The enclosure may have permanent or temporary openings to allow worker access; passage of containers through the enclosure by conveyor or other mechanical means; entry of permanent mechanical or electrical equipment; or to direct airflow into the enclosure. The pressure drop across each opening in the enclosure shall be maintained at a pressure below atmospheric pressure such that whenever an open container is placed inside the enclosure no organic vapors released from the container exit the enclosure through the opening. The owner or operator shall determine that an enclosure achieves this condition by measuring the pressure drop across each opening in the enclosure. If the pressure within the enclosure is equal to or greater than atmospheric pressure then the enclosure does not meet the requirements of this section.

3. The closed-vent system and control device shall be designed and operated in accordance with the requirements of Section 7 of this administrative regulation.

(c) An owner or operator transferring hazardous waste

into a container having a design capacity greater than 0.46 m³ (121.5 gallons) shall meet the following requirements:

1. Hazardous waste transfer by pumping shall be performed using a conveyance system that uses a tube (for example, pipe, hose) to add the waste into the container. During transfer of the waste into the container, the cover shall remain in place and all container openings shall be maintained in a closed, sealed position except for those openings through which the tube enters the container and as provided for in subsection (3) of this section. The tube shall be positioned in a manner such that either the:

a. Tube outlet continuously remains submerged below the waste surface at all times waste is flowing through the tube;

b. Lower bottom edge of the tube outlet is located at a distance no greater than two inside diameters of the tube or 15.25 cm (6 inches), whichever distance is greater, from the bottom of the container at all times waste is flowing through the tube; or

c. Tube is connected to a permanent port mounted on the bottom of the container so that the lower edge of the port opening inside the container is located at a distance equal to or less than 15.25 cm (6 inches) from the container bottom.

2. Hazardous waste transferred by a means other than pumping shall be performed such that during transfer of the waste into the container, the cover remains in place and all container openings are maintained in a closed, sealed position except for those openings through which the hazardous waste is added and as provided for in subsection (4) of this section.

(3) Each container opening shall be maintained in a closed, sealed position (for example, covered by a gasketed lid) at all times that hazardous waste is in the container except when it is necessary to use the opening to:

(a) Add, remove, inspect, or sample the material in the container;

(b) Inspect, maintain, repair, or replace equipment located inside the container; or

(c) Vent gases or vapors from a cover located over or enclosing an open container to a closed-vent system connected to a control device that is designed and operated in accordance with the requirements of Section 7 of this administrative regulation.

(4) One or more safety devices that vent directly to the atmosphere may be used on the container, cover, enclosure, closed-vent system, or control device provided each device meets all of the following conditions:

(a) The safety device is not used for planned or routine venting of organic vapors from the container, cover, enclosure, or closed-vent system connected to a control device; and

(b) The safety device remains in a closed, sealed position at all times except when an unplanned event requires that the device open for the purpose of preventing physical damage or permanent deformation of the container, cover, enclosure, closed-vent system, or control device in accordance with good engineering and safety practices for handling flammable, combustible, explosive, or other hazardous materials. An example of an unplanned event is a sudden power outage.

Section 7. Standards: Closed-vent Systems and Control Devices.

(1) This section applies to each closed-vent system and control device installed and operated by the owner or operator to control air emissions in accordance with standards of this administrative regulation.

(2) The closed-vent system shall meet the following requirements:

(a) The closed-vent system shall route the gases, vapors, and fumes emitted from the hazardous waste in the hazardous waste management unit to a control device that meets the requirements specified in subsection (3) of this section.

(b) The closed-vent system shall be designed and operated in accordance with the requirements specified in Section 4(11) of 401 KAR 34:275.

(c) If the closed-vent system contains one or more bypass

devices that may be used to divert all or a portion of the gases, vapors, or fumes from entering the control device, the owner or operator shall meet the following requirements:

1. For each bypass device except as provided for in subparagraph 2. of this paragraph, the owner or operator shall either:

a. Install, calibrate, maintain, and operate a flow indicator at the inlet to the bypass device that indicates at least once every 15 minutes whether gas, vapor, or fume flow is present in the bypass device; or

b. Secure a valve installed at the inlet to the bypass device in the closed position using a car-seal or a lock-and-key type configuration. The owner or operator shall visually inspect the seal or closure mechanism at least once every month to verify that the valve is maintained in the closed position.

2. Low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and safety devices are not subject to the requirements of subparagraph 1 of this paragraph.

(3) The control device shall meet the following requirements:

(a) The control device shall be one of the following devices:

1. A control device designed and operated to reduce the total organic content of the inlet vapor stream vented to the control device by at least 95 percent by weight;

2. An enclosed combustion device designed and operated in accordance with the requirements of Section 4(3) of 401 KAR 34:275; or

3. A flare designed and operated in accordance with the requirements of Section 4(4) of 401 KAR 34:275.

(b) The control device shall be operating at all times when gases, vapors, or fumes are vented from the hazardous waste management unit through the closed-vent system to the control device.

(c) The owner or operator using a carbon adsorption system to comply with paragraph (a) of this subsection shall operate and maintain the control device in accordance with the following requirements:

1. Following the initial startup of the control device, all activated carbon in the control device shall be replaced with fresh carbon on a regular basis in accordance with the requirements of Section 4(7) or 4(8) of 401 KAR 34:275.

2. All carbon removed from the control device shall be managed in accordance with the requirements of Section 4(13) of 401 KAR 34:275.

(d) An owner or operator using a control device other than a thermal vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system to comply with subsection (3)(a) of this section shall operate and maintain the control device in accordance with the requirements of Section 4(1) of 401 KAR 34:275.

(e) The owner or operator shall demonstrate that a control device achieves the performance requirements of subsection (3)(a) of this section as follows:

1. An owner or operator shall demonstrate using either a performance test as specified in subparagraph 3. of this paragraph or a design analysis as specified in subparagraph 4. of this paragraph the performance of each control device except for the following:

a. A flare;

b. A boiler or process heater with a design heat input capacity of 44 megawatts or greater;

c. A boiler or process heater into which the vent stream is introduced with the primary fuel;

d. A boiler or process heater burning hazardous waste for which the owner or operator has been issued a final permit under 401 KAR Chapter 38 and designs and operates the unit in accordance with the requirements of 401 KAR 36:020; or

e. A boiler or process heater burning hazardous waste for which the owner or operator has certified compliance with the interim status requirements of 401 KAR 36:020.

2. An owner or operator shall demonstrate the performance of each flare in accordance with the requirements specified in Section

4(5) of 401 KAR 34:275.

3. For a performance test conducted to meet the requirements of subparagraph 1. of this paragraph, the owner or operator shall use the test methods and procedures specified in Section 5(3)(a) through (d) of 401 KAR 34:275.

4. For a design analysis conducted to meet the requirements of subparagraph 1. of this paragraph, the design analysis shall meet the requirements specified in Section 6(2)(d)3. of 401 KAR 34:275.

5. The owner or operator shall demonstrate that a carbon adsorption system achieves the performance requirements of subsection (3)(a) of this section based on the total quantity of organics vented to the atmosphere from all carbon adsorption system equipment that is used for organic adsorption, organic desorption or carbon regeneration, organic recovery, and carbon disposal.

6. If the owner or operator and the cabinet do not agree on a demonstration of control device performance using a design analysis then the disagreement shall be resolved using the results of a performance test performed by the owner or operator in accordance with the requirements of subparagraph 3. of this paragraph. The cabinet may choose to have an authorized representative observe the performance test.

Section 8. Inspection and Monitoring Requirements. (1) This section applies to an owner or operator using air emission controls in accordance with the requirements of Section 4 through 7 of this administrative regulation.

(2) Each cover used in accordance with requirements of Section 4 through 6 of this administrative regulation shall be visually inspected and monitored for detectable organic emissions by the owner or operator using the procedure specified in Section 9(6)(a) through (g) of 401 KAR 35:281 except as follows:

(a) An owner or operator is exempted from performing the cover inspection and monitoring requirements specified in Section 9(6)(a) through (g) of 401 KAR 35:281 for the following tank covers:

1. A tank internal floating roof that is inspected and monitored in accordance with the requirements of Section 11 of this administrative regulation; or

2. A tank external floating roof that is inspected and monitored in accordance with the requirements of Section 11 of this administrative regulation.

(b) If a tank is buried partially or entirely underground, an owner or operator is required to perform the cover inspection and monitoring requirements specified in Section 9(6)(a) through (g) of 401 KAR 35:281 only for those portions of the tank cover and those connections to the tank cover or tank body (for example fill ports, access hatches, gauge wells, etc.) that extend to or above the ground surface and can be opened to the atmosphere.

(c) An owner or operator is exempted from performing the cover inspection and monitoring requirements specified in Section 9(6)(a) through (g) of 401 KAR 35:281 for a container that meets all requirements specified in either Section 6(2)(a)2. or 3. of this administrative regulation.

(d) An owner or operator is exempted from performing the cover inspection and monitoring requirements specified in Section 9(6)(a) through (g) of 401 KAR 35:281 for an enclosure used to control air emissions from containers in accordance with the requirements of Section 6(2)(b) of this administrative regulation.

(3) Each closed-vent system used in accordance with the requirements of Section 7 shall be inspected and monitored by the owner or operator in accordance with the procedure specified in Section 4(11) of 401 KAR 34:275.

(4) Each control device used in accordance with the requirements of Section 7 of this administrative regulation shall be inspected and monitored by the owner or operator in accordance with the procedures specified in Section 4(6) and 4(9) of 401 KAR 34:275.

(5) The owner or operator shall develop and implement a written plan and schedule to perform all inspection and monitoring require-

ments of this section. The owner or operator shall incorporate this plan and schedule into the facility inspection plan required under Section 6 of 401 KAR 34:020.

Section 9. Recordkeeping Requirements. (1) Each owner or operator of a facility subject to requirements in this administrative regulation shall record and maintain the following information as applicable:

(a) Documentation for each cover installed on a tank in accordance with the requirements of Section 4(2)(b) or 4(2)(c) of this administrative regulation that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the applicable design specifications as listed in Section 11 of 401 KAR 35:281.

(b) Documentation for each floating membrane cover installed on a surface impoundment in accordance with the requirements of Section 5(3) of this administrative regulation that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the specifications listed in Section 6(3) of 401 KAR 35:281.

(c) Documentation for each enclosure used to control air emissions from containers in accordance with the requirements of Section 6(2)(b)1. of this administrative regulation that includes information prepared by the owner or operator or provided by the manufacturer or vendor describing the enclosure design, and certification by the owner or operator that the enclosure meets the specifications listed in Section 6(2)(b)1. of this administrative regulation.

(d) Documentation for each closed-vent system and control device installed in accordance with the requirements of Section 7 of this administrative regulation that includes:

1. Certification that is signed and dated by the owner or operator stating that the control device is designed to operate at the performance level documented by a design analysis as specified in subparagraph 2. of this paragraph or by performance tests as specified in subparagraph 3. of this paragraph when the tank, surface impoundment, or container is or would be operating at capacity or the highest level reasonably expected to occur.

2. If a design analysis is used, then design documentation as specified in Section 6(2)(d) of 401 KAR 34:275. The documentation shall include information prepared by the owner or operator or provided by the control device manufacturer or vendor that describes the control device design in accordance with Section 6(2)(d)3. of 401 KAR 34:275 and certification by the owner or operator that the control equipment meets the applicable specifications.

3. If performance tests are used, then a performance test plan as specified in Section 6(2)(c) of 401 KAR 34:275 and all test results.

4. Information as required by Section 6(3)(a) and (3)(c) of 401 KAR 34:275.

(e) Records for all Method 27 tests of 40 CFR Part 60, Appendix A, performed by the owner or operator for each container used to meet the requirements of Section 6(2)(a)3. of this administrative regulation.

(f) Records for all visual inspections conducted in accordance with the requirements of Section 8 of this administrative regulation.

(g) Records for all monitoring for detectable organic emissions conducted in accordance with the requirements of Section 8 of this administrative regulation.

(h) Records of the date of each attempt to repair a leak, repair methods applied, and the date of successful repair.

(i) Records for all continuous monitoring conducted in accordance with the requirements of Section 8 of this administrative regulation.

(j) Records of the management of carbon removed from a carbon adsorption system conducted in accordance with Section 7(3)(c)2. of this administrative regulation.

(k) Records for all inspections of each cover installed on a tank in accordance with the requirements of Section 4(2)(b) or 4(2)(c) of this administrative regulation that includes information as listed in Section 11(5) of this administrative regulation.

(2) An owner or operator electing to use air emission controls for a tank in accordance with the conditions specified in Section 4(3) of this administrative regulation shall record the following information:

(a) Date and time each waste sample is collected for direct measurement of maximum organic vapor pressure in accordance with Section 3(3) of this administrative regulation.

(b) Results of each determination of the maximum organic vapor pressure of the waste in a tank performed in accordance with Section 3(3) of this administrative regulation.

(c) Records specifying the tank dimensions and design capacity.

(3) An owner or operator electing to use air emission controls for a tank in accordance with the requirements of Section 11 of this administrative regulation shall record the information required by Section 11(3) of this administrative regulation.

(4) An owner or operator electing not to use air emission controls for a particular tank, surface impoundment, or container subject to this administrative regulation in accordance with the conditions specified in Section 2(3) of this administrative regulation shall record the information used by the owner or operator for each waste determination (for example, test results, measurements, calculations, and other documentation) in the facility operating log. If analysis results for waste samples are used for the waste determination, then the owner or operator shall record the date, time, and location that each waste sample is collected in accordance with applicable requirements of Section 3 of this administrative regulation.

(5) An owner or operator electing to comply with requirements in accordance with Section 2(3)(b)5. or 6. of this administrative regulation shall record the identification number for the incinerator, boiler, or industrial furnace in which the hazardous waste is treated.

(6) An owner or operator designating a cover as unsafe to inspect and monitor pursuant to Section 9(6)(f) of 401 KAR 35:281 or difficult to inspect and monitor pursuant to Section 9(6)(e) of 401 KAR 35:281 shall record in a log that is kept in the facility operating record the following information:

(a) A list of identification numbers for tanks with covers that are designated as unsafe to inspect and monitor in accordance with the requirements of Section 9(6)(e) of 401 KAR 35:281, an explanation for each cover stating why the cover is unsafe to inspect and monitor, and the plan and schedule for inspecting and monitoring each cover.

(b) A list of identification numbers for tanks with covers that are designated as difficult to inspect and monitor in accordance with the requirements of Section 9(6)(f) of 401 KAR 35:281, an explanation for each cover stating why the cover is difficult to inspect and monitor, and the plan and schedule for inspecting and monitoring each cover.

(7) All records required by subsections (1) through (6) of this section except as required in subsections (1)(a) through (d) of this section shall be maintained in the operating record for a minimum of 3 years. All records required by subsection (1)(a) through (d) of this section shall be maintained in the operating record until the air emission control equipment is replaced or otherwise no longer in service.

(8) The owner or operator of a facility that is subject to this administrative regulation and to the control device standards in 40 CFR Part 60, Subpart VV or 40 CFR Part 61, Subpart V may elect to demonstrate compliance with the applicable sections of this administrative regulation by documentation either pursuant to this administrative regulation, or pursuant to the provisions of 40 CFR Part 60, Subpart VV or 40 CFR Part 61, Subpart V, to the extent that the documentation required by 40 CFR parts 60 or 61 duplicates the documentation required by this section.

(9) For each tank or container not using air emission controls specified in Sections 4 through 7 of this administrative regulation in accordance with the conditions specified in Section 1(4) of this

administrative regulation, the owner or operator shall record and maintain the following information:

(a) A list of the individual organic peroxide compounds manufactured at the facility that meet the conditions specified in Section 1(4)(a) of this administrative regulation.

(b) A description of how the hazardous waste containing the organic peroxide compounds identified in paragraph (a) of this subsection are managed at the facility in tanks and containers. This description shall include:

1. For the tanks used at the facility to manage this hazardous waste, sufficient information shall be provided to describe for each tank: a facility identification number for the tank; the purpose and placement of this tank in the management train of this hazardous waste; and the procedures used to ultimately dispose of the hazardous waste managed in the tanks.

2. For containers used at the facility to manage these hazardous wastes, sufficient information shall be provided to describe: a facility identification number for the container or group of containers; the purpose and placement of this container, or group of containers, in the management train of this hazardous waste; and the procedures used to ultimately dispose of the hazardous waste handled in the containers.

(c) An explanation of why managing the hazardous waste containing the organic peroxide compounds identified in subsection (9)(a) of this section in the tanks and containers as described in subsection (9)(b) of this section would create an undue safety hazard if the air emission controls, as required under Sections 4 through 7 of this administrative regulation, are installed and operated on these hazardous waste management units. The explanation shall include the following information:

1. For tanks used at the facility to manage these hazardous wastes, sufficient information shall be provided to explain: how use of the required air emission controls on the tanks would affect the tank design features and facility operating procedures currently used to prevent an undue safety hazard during the management of this hazardous waste in the tanks; and why installation of safety devices on the required air emission controls, as allowed under Section 4(7) of this administrative regulation, will not address those situations in which evacuation of tanks equipped with these air emission controls is necessary and consistent with good engineering and safety practices for handling organic peroxides.

2. For containers used at the facility to manage these hazardous wastes, sufficient information shall be provided to explain: how use of the required air emission controls on the containers would affect the container design features and handling procedures currently used to prevent an undue safety hazard during the management of this hazardous waste in the containers; and why installation of safety devices on the required air emission controls, as allowed under Section 6(4) of this administrative regulation, will not address those situations in which evacuation of containers equipped with these air emission controls is necessary and consistent with good engineering and safety practices for handling organic peroxides.

Section 10. Reporting Requirements. (1) Each owner or operator managing hazardous wastes in a tank, surface impoundment, or container exempted from using air emission controls under the provisions of Section 2(3) of this administrative regulation shall report to the cabinet each occurrence when hazardous waste is placed in the hazardous waste management unit in noncompliance with the conditions specified in Section 2(3)(a)1 or 5 of this administrative regulation, as applicable. Examples of such occurrences include placing in the hazardous waste management unit a hazardous waste having an average VO concentration equal to or greater than 100 ppmw at the point of waste origination; or placing in the hazardous waste management unit a treated hazardous waste that fails to meet the applicable conditions specified in Section 2(3)(b)1 through 5 of this administrative regulation. The owner or operator shall submit a

written report within fifteen (15) calendar days of the time that the owner or operator becomes aware of the occurrence. The written report shall contain the EPA identification number, facility name and address, a description of the noncompliance event and the cause, the dates of the noncompliance, and the actions taken to correct the noncompliance and prevent reoccurrence of the noncompliance. The report shall be signed and dated by an authorized representative of the owner or operator.

(2) Each owner or operator using air emission controls on a tank in accordance with the requirements Section 4(3) of this administrative regulation shall report to the cabinet each occurrence when hazardous waste is managed in the tank in noncompliance with the conditions specified in Section 4(3)(a) through Section 4(3)(d) of this administrative regulation. The owner or operator shall submit a written report within fifteen (15) calendar days of the time that the owner or operator becomes aware of the occurrence. The written report shall contain the EPA identification number, facility name and address, a description of the noncompliance event and the cause, the dates of the noncompliance, and the actions taken to correct the noncompliance and prevent reoccurrence of the noncompliance. The report shall be signed and dated by an authorized representative of the owner or operator.

(3) Each owner or operator using a control device in accordance with the requirements of Section 7 of this administrative regulation shall submit a semiannual written report to the cabinet excepted as provided for in subsection (4) of this section. The report shall describe each occurrence during the previous six (6) month period when a control device is operated continuously for twenty-four (24) hours or longer in noncompliance with the applicable operating values defined in Section 6(3)(d) of 401 KAR 35:275 or when a flare is operated with visible emissions as defined in Section 4(4) of 401 KAR 35:275. The written report shall include the EPA identification number, facility name and address, and an explanation why the control device could not be returned to compliance within 24 hours, and actions taken to correct the noncompliance. The report shall be signed and dated by an authorized representative of the owner or operator.

(4) A report to the cabinet in accordance with the requirements of subsection(3) of this section is not required for a six (6) month period during which all control devices subject to this administrative regulation are operated by the owner or operator such that during no period of twenty-four (24) hours or longer did a control device operate continuously in noncompliance with the applicable operating values defined in Section 6(3)(d) of 401 KAR 34:275 or a flare operate with visible emissions as defined in Section 4(4) of 401 KAR 34:275.

Section 11. Alternative Control Requirements for Tanks. (1) This section applies to owners and operators of tanks electing to comply with Section 4(2)(b) or Section 4(2)(c) of this administrative regulation.

(a) The owner or operator electing to comply with Section 4(2)(b) of this administrative regulation shall design, install, operate, and maintain a fixed roof and internal floating roof that meet the requirements specified in Section 11(1)(a)1 through 9 of 401 KAR 35:281.

(b) The owner or operator electing to comply with Section 4(2)(c) of this administrative regulation shall design, install, operate, and maintain an external floating roof that meets the requirements specified in Section 11(1)(b)1 through 3 of 401 KAR 35:281.

(2) The owner or operator shall inspect and monitor the control equipment in accordance with the following requirements:

(a) For a tank equipped with a fixed roof and internal floating roof in accordance with the requirements of subsection (3)(a) of this section, the owner or operator shall perform the inspection and monitoring requirements specified in Section 11(2)(a) of 401 KAR 35:281.

(b) For a tank equipped with an external floating roof in accordance with the requirements of subsection (1)(b) of this section, the owner or operator shall perform the inspection and monitoring requirements specified in Section 11(2)(b) of 401 KAR 35:281.

(3) The owner or operator shall record the following information in the operating record in accordance with the requirements of Section 9(1)(a) and (k) of this administrative regulation:

(a) For a tank equipped with a fixed roof and internal floating roof in accordance with the requirements of subsection (1)(a) of this section, the owner or operator shall record the information listed in Section 11(3)(a) of 401 KAR 35:281.

(b) For a tank equipped with an external floating roof in accordance with the requirements of subsection (1)(a) of this section, the owner or operator shall record the information listed in Section 11(3)(b) of 401 KAR 35:281.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed regulation affects owners and operators of hazardous waste facilities that treat, store, or dispose of hazardous waste in tanks, surface impoundments, or containers.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: There will be no costs or savings.

2. Continuing costs or savings: There will be no extra costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs.

b. Reporting and paperwork requirements: There are not any additional paperwork or reporting requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state or local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants are anticipated to be used for the implementation and enforcement of the regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were not considered. This administrative regulation is consistent with federal standards.

8. Assessment of expected benefits of the administrative regulation: This administrative regulation provides consistency with federal standards.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: The implementation of this regulation will improve public health and the environment across the commonwealth.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Yes, detrimental effects could occur without the implementation of this regulation.

c. If detrimental effect would result, explain detrimental effect: The air emissions subject to this regulation could harm human health and the environment without the implementation of this regulation.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: There are no additional comments.

12. TIERING: Is tiering applied? Yes, tiering was used. This administrative regulation applies to owners and operators of hazardous waste facilities that treat, store, or dispose of hazardous waste and is consistent with federal standards.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed regulation adopts

changes that apply to air emission standards for tanks, surface impoundments, and containers. The regulation is necessary to maintain consistency between state and federal programs. The regulation clarifies the applicability of the standards. In addition, the regulation has been modified to reflect the requirements of regulation construction specified in KRS 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that stores, treats, or disposes of hazardous waste in tanks, surface impoundments, or containers.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (New Administrative Regulation)

401 KAR 34:287. Corrective action for waste management units.

RELATES TO: KRS 224.01, 224.10, 224.46, 40 CFR 264 Subpart S

STATUTORY AUTHORITY: KRS 224.01-400, 224.10-100, 224.46-520, 224.46-530

NECESSITY AND FUNCTION: This chapter establishes standards for new hazardous waste sites or facilities, as required by KRS 224.46-520 and 224.46-530. This administrative regulation establishes standards for owners and operators of hazardous waste sites or facilities that manage hazardous waste in corrective action manage-

ment units.

Section 1. Corrective Action Management Units (CAMU). (1) For the purpose of implementing remedies under Section 12 of 401 KAR 34:060 or KRS 224.46-530, the cabinet may designate an area at the facility as a corrective action management unit (CAMU) in accordance with the requirements of this section. One (1) or more CAMUs may be designated at a facility.

(a) Placement of remediation wastes into or within a CAMU does not constitute land disposal of hazardous wastes.

(b) Consolidation or placement of remediation wastes into or within a CAMU does not constitute creation of a unit subject to minimum technology requirements.

(2)(a) The cabinet may designate a regulated unit (as identified in Section 1(1)(b) of 401 KAR 34:060) as a CAMU, or may incorporate a regulated unit into a CAMU, if:

1. The regulated unit is closed or closing, meaning it has begun the closure process under Section 4 of 401 KAR 34:070 or Section 4 of 401 KAR 35:070; and

2. Inclusion of the regulated unit will enhance implementation of effective, protective and reliable remedial actions for the facility.

(b) The requirements of 401 KAR 34:060, 34:070, 34:080, 35:060, 35:070, and 35:080 and the unit-specific requirements of 401 KAR Chapters 34 or 35 that applied to that regulated unit will continue to apply to that portion of the CAMU after incorporation into the CAMU.

(3) The cabinet shall designate a CAMU in accordance with the following criteria:

(a) The CAMU will facilitate the implementation of reliable, effective, protective, and cost-effective remedies;

(b) Waste management activities associated with the CAMU will not create unacceptable risks to humans or to the environment resulting from exposure to hazardous wastes or hazardous constituents;

(c) The CAMU will include uncontaminated areas of the facility, only if including such areas for the purpose of managing remediation waste is more protective than management of such wastes at contaminated areas of the facility;

(d) Areas within the CAMU, where wastes remain in place after closure of the CAMU, shall be managed and contained so as to minimize future releases, to the extent practicable;

(e) The CAMU will expedite the timing of remedial activity implementation, when appropriate and practicable;

(f) The CAMU will enable the use, when appropriate, of treatment technologies (including innovative technologies) to enhance the long-term effectiveness of remedial actions by reducing the toxicity, mobility, or volume of wastes that will remain in place after closure of the CAMU; and

(g) The CAMU will, to the extent practicable, minimize the land area of the facility upon which wastes will remain in place after closure of the CAMU.

(4) The owner or operator shall provide sufficient information to enable the cabinet to designate a CAMU in accordance with the criteria in this section.

(5) The cabinet shall specify, in the permit or order, requirements for CAMUs to include the following:

(a) The areal configuration of the CAMU.

(b) Requirements for remediation waste management to include the specification of applicable design, operation and closure requirements.

(c) Requirements for groundwater monitoring that are sufficient to:

1. Continue to detect and to characterize the nature, extent, concentration, direction, and movement of existing releases of hazardous constituents in groundwater from sources located within the CAMU; and

2. Detect and subsequently characterize releases of hazardous constituents to groundwater that may occur from areas of the CAMU in which wastes will remain in place after closure of the CAMU.

(d) Closure and postclosure requirements.

1. Closure of CAMUs will:

a. Minimize the need for further maintenance; and

b. Control, minimize, or eliminate, to the extent necessary to protect human health and the environment, for areas where wastes remain in place, postclosure escape of hazardous waste, hazardous constituents, leachate, contaminated runoff, or hazardous waste decomposition products to the soils, to groundwater, to surface waters, or to the atmosphere.

2. Requirements for closure of CAMUs shall include the following, as appropriate and as deemed necessary by the cabinet for a given CAMU:

a. Requirements for excavation, removal, treatment or containment of wastes;

b. For areas in which wastes will remain after closure of the CAMU, requirements for capping of such areas; and

c. Requirements for removal and decontamination of equipment, devices, and structures used in remediation waste management activities within the CAMU.

3. In establishing specific closure requirements for CAMUs under this subsection, the cabinet shall consider the following factors:

a. CAMU characteristics;

b. Volume of wastes that remain in place after closure;

c. Potential for releases from the CAMU;

d. Physical and chemical characteristics of the waste;

e. Hydrological and other relevant environmental conditions at the facility that may influence the migration of any potential or actual releases; and

f. Potential for exposure of humans and environmental receptors if releases were to occur from the CAMU.

4. The owner or operator shall perform postclosure requirements as necessary to protect human health and the environment. These shall include, for areas where wastes will remain in place, monitoring and maintenance activities, and the frequency with which such activities shall be performed to ensure the integrity of any cap, final cover, or other containment system.

(6) The cabinet shall document the rationale for designating CAMUs and shall make such documentation available to the public.

(7) Incorporation of a CAMU into an existing permit shall be approved by the cabinet according to the procedures for cabinet initiated permit modifications under Section 3 of 401 KAR 38:040, or according to the permit modification procedures of Section 2 of 401 KAR 38:040.

(8) The designation of a CAMU does not change the cabinet's existing authority to address clean-up levels, media-specific points of compliance to be applied to remediation at a facility, or other remedy selection decisions.

Section 2. Temporary Units (TU). (1) For temporary tanks and container storage areas used for treatment or storage of hazardous remediation wastes, during remedial activities required under Section 12 of 401 KAR 34:060 or KRS 224.46-530, the cabinet may determine that a design, operating, or closure standard applicable to such units may be replaced by alternative requirements that are protective of human health and the environment.

(2) Any temporary unit to which alternative requirements are applied in accordance with subsection (1) of this section shall be:

(a) Located within the facility boundary; and

(b) Used only for treatment or storage of remediation wastes.

(3) In establishing standards to be applied to a temporary unit, the cabinet shall consider the following factors:

(a) Length of time such unit will be in operation;

(b) Type of unit;

(c) Volumes of wastes to be managed;

(d) Physical and chemical characteristics of the wastes to be managed in the unit;

(e) Potential for releases from the unit;

(f) Hydrogeological and other relevant environmental conditions at the facility that may influence the migration of any potential releases; and

(g) Potential for exposure of humans and environmental receptors if releases were to occur from the unit.

(4) The cabinet shall specify in the permit or order the length of time a temporary unit will be allowed to operate, to be no longer than a period of one (1) year. The cabinet shall also specify the design, operating, and closure requirements for the unit.

(5) The cabinet may extend the operational period of a temporary unit once for no longer than a period of one (1) year beyond that originally specified in the permit or order, if the cabinet determines that:

(a) Continued operation of the unit will not pose a threat to human health and the environment; and

(b) Continued operation of the unit is necessary to ensure timely and efficient implementation of remedial actions at the facility.

(6) Incorporation of a temporary unit or a time extension for a temporary unit into an existing permit shall be:

(a) Approved in accordance with the procedures for cabinet initiated permit modifications under Section 2 or 3 of 401 KAR 38:040; or

(b) Requested by the owner or operator as a major modification according to the procedures under Section 2 of 401 KAR 38:040.

(7) The cabinet shall document the rationale for designating a temporary unit and for granting time extensions for temporary units and shall make such documentation available to the public.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

ADMINISTRATIVE REGISTER - 1120

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed regulation affects owners or operators of corrective action management units.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The existing staff of the agency will have an increased workload in order to process the newly regulated entities.

2. Continuing costs or savings: Once the new entities are processed, there will not be any extra costs.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs.

b. Reporting and paperwork requirements: There are no extra paperwork or reporting requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants are to be used for the implementation and enforcement of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were not considered. This regulation is consistent with federal standards.

8. Assessment of expected benefits of the administrative regulation: This administrative regulation provides consistency with existing federal requirements.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: The implementation of this regulation will improve public health and environmental welfare across the commonwealth.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Detrimental effects could occur without the implementation of this regulation.

c. If detrimental effect would result, explain detrimental effect: Public health and the environment could be harmed without appropriate regulation of corrective action management units.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, policies, or regulations that overlap, conflict, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional

comments.

12. TIERING: Is tiering applied? Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of hazardous waste generated or managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed regulation adopts changes that apply to corrective action for waste management units. This regulation is necessary to maintain consistency between state and federal programs. This regulation clarifies the applicability of the standards. In addition, the regulation has been modified to reflect regulation construction specified in KRS 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that own or operate facilities that wish to incorporate corrective action management units.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(New Administrative Regulation)**

401 KAR 35:005. Definitions Related to 401 KAR Chapter 35.

RELATES TO: KRS 224.01, 224.10, 224.46, 40 CFR 260.10, 265.141, 265.1031, 265.1051, 265.1081

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520, 224.46-530

NECESSITY AND FUNCTION: This chapter establishes standards which define the acceptable management of hazardous waste during the period of interim status and until certification of final closure or, if the facility is subject to postclosure requirements, until postclosure responsibilities are fulfilled. This administrative regulation defines essential terms that are used in this chapter.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or otherwise specifically indicated by context, terms in 401 KAR Chapter 35 shall have the meanings given in this section.

(1) "100-year floodplain" means any land area which is subject to a one (1) percent or greater chance of flooding in any given year from any source.

(2) "100-year flood" means a flood that has a one (1) percent chance of being equaled or exceeded in any given year.

(3) "Aboveground tank" means a device meeting the definition of "tank" and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

(4) "Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

(5) "Accumulated speculatively" means that a material is accumulated before being recycled.

(a) A material is not accumulated speculatively, if the person accumulating it can show:

1. That the material is potentially recyclable and has a feasible means of being recycled; and

2. That - during the calendar year (commencing on January 1) - the amount of material that is recycled, or transferred to a different site for recycling, equals at least seventy-five (75) percent by weight or volume of the amount of that material accumulated at the beginning of the calendar year (including any material accumulated from previous years).

(b) In calculating the percentage of turnover, the seventy-five (75) percent requirement is to be applied to each material of the same type that is recycled in the same way. Materials accumulating in units that would be exempt from administrative regulation under Section 4(3) of 401 KAR 31:010 are not to be included in making the calculation. (Materials that are already defined as wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling.

(6) "Active fault" means a land area which, according to the weight of geological evidence, has a reasonable probability of being affected by movement along a fault to the extent that a waste site or facility would be damaged and thereby pose a threat to human health and the environment.

(7) "Active life" of a facility means the period from the initial receipt of waste at a waste site or facility until the cabinet receives certification of final closure.

(8) "Active portion" means any area of a facility where treatment, storage, or disposal operations are being or have been conducted and which have not been closed. It includes the treated area of a

landfarm and the active face of a landfill. Covered, closed, or inactive portions of landfills, building roofs, and roads are excluded unless designated as "active portions" by the cabinet.

(9) "Admixed liner" means a liner made from a mixture of any of a multitude of materials, often asphalt or cement, with widely varying physical and chemical properties. Admixed liners shall be demonstrated to be structurally sound and chemically resistant to the waste placed in it so as to be capable of supporting the waste without cracking or disintegrating or allowing waste or leachate to escape.

(10) "Agricultural waste" means any nonhazardous waste resulting from the production and processing of on-the-farm agricultural products, including manures, prunings and crop residues.

(11) "Air stripping operation" is a desorption operation employed to transfer one (1) or more volatile components from a liquid mixture into a gas (air) either with or without the application of heat to the liquid. Packed towers, spray towers, and bubble-cap, sieve, or valve-type plate towers are among the process configurations used for contacting the air and a liquid.

(12) "Ampule" means a small sealed glass container for one (1) dose of sterile medicine.

(13) "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to hazardous waste management units including tanks between hazardous waste storage and treatment tanks to a point of disposal on site, or to a point of shipment for disposal off site.

(14) "Application" means the form approved by the cabinet for applying for a permit, including any additions, revisions or modifications and any narrative and drawings required by 401 KAR Chapters 30 to 48. The term includes: Part A of the application (Part A); Part B of the application (Part B); notice of intent; administration application; special waste application; or technical application.

(15) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(16) "As received waste" refers to the waste as received in the shipment from the generator or sample collector.

(17) "Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

(18) "Attenuation" means any decrease in the maximum concentration or total quantity of an applied chemical or biological constituent in a fixed time or distance traveled resulting from a physical, chemical, or biological reaction or transformation occurring in the zone of aeration or zone of saturation.

(19) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit or part of a facility, such as the plant manager, superintendent, or person of equivalent responsibility.

(20) "Average volatile organic concentration" or "average VO concentration" means the mass-weighted average volatile organic concentration of a hazardous waste as determined in accordance with the requirements of Section 4 of 401 KAR 35:281.

(21) "Base flood" means a flood that has a one (1) percent or greater chance of recurring in any year, or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

(22) "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

(23) "Board" shall have the meaning specified in KRS 224.46-810.

(24) "Bodily injury" shall have the meaning given by applicable

Kentucky statutes. Bodily injury does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for bodily injury.

(25) "Boiler" means an enclosed device using control flame combustion and having the following characteristics:

(a)1. The unit shall have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

2. The unit's combustion chamber and primary energy recovery section(s) shall be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section (such as water walls and superheaters) shall be physically formed into one (1) manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream) and fluidized bed combustion units; and

3. While in operation, the unit shall maintain a thermal energy recovery efficiency of at least sixty (60) percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

4. The unit shall export and utilize at least seventy-five (75) percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or(b) The unit is one (1) which the cabinet has determined, on a case-by-case basis, to be a boiler, after considering the standards in 401 KAR 30:080.

(26) "Bottoms receiver" means a container or tank used to receive and collect heavier bottoms fractions of the distillation feed stream that remain in the liquid phase.

(27) "Burn" means burning for energy recovery or destruction, or processing for materials recovery or as an ingredient.

(28) "By-product" is a material that is not one (1) of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a coproduct that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

(29) "Cabinet" shall have the meaning specified in KRS 224.01-010.

(30) "Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

(31) "Cation exchange capacity" means the sum of exchangeable cations a soil can absorb expressed in milliequivalents per 100 grams of soil as determined by sampling the soil to the depth of cultivation or solid waste placement, whichever is greater, and analyzing by the summation method for distinctly acid soils or the sodium acetate method for neutral, calcareous, or saline soils.

(32) "Certificate" shall have the meaning specified in KRS 224.46-810.

(33) "Certification" means a statement of professional opinion based upon knowledge and belief.

(34) "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements.

(35) "Closed-vent system" means a system that is not open to the atmosphere and that is composed of piping, connections, and; if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device.

(36) "Closure plan" means the plan for closure prepared in

accordance with the requirements of Section 3 of 401 KAR 34:070 or Section 3 of 401 KAR 35:070.

(37) "Closure" shall have the meaning specified in KRS 224.01-010.

(38) "Component" means either the tank or ancillary equipment of a tank system.

(39) "Condenser" means a heat-transfer device that reduces a thermodynamic fluid from its vapor phase to its liquid phase.

(40) "Conditionally Exempt Small Quantity Generator" means:

(a) A generator who generates no more than 100 kilograms of hazardous waste in a calendar month; and

(b) A generator who generates acutely hazardous waste listed in Sections 2, 3, and 4(5) of 401 KAR 31:040 in a calendar month in quantities greater than one (1) kilogram. All quantities of that acutely hazardous waste are subject to administrative regulation under 401 KAR Chapters 32 through 39, and the notification and permitting requirements of KRS 224.01-400, 224.40-310, 224.46-510, 224.46-580, and 224.50-130 to 224.50-413.

(41) "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(42) "Connector" means flanged, screwed, welded, or other joined fitting used to connect two (2) pipelines or a pipeline and a piece of equipment. For the purposes of reporting and recordkeeping, connector means flanged fittings that are not covered by insulation or other materials that prevent location of the fittings.

(43) "Consignee" means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste is sent.

(44) "Constituent" shall have the same meaning as "hazardous waste constituent."

(45) "Container" means any portable device in which hazardous waste is transported, stored, treated, or otherwise handled, and includes transport vehicles that are containers themselves (for example, tank trucks, tanker-trailers, and rail tank cars), and containers placed on or in a transport vehicle.

(46) "Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of 401 KAR 34:245 or 35:245.

(47) "Contaminate" means introduce a substance that would cause:

(a) The concentration of that substance in the groundwater to exceed the maximum contaminant level specified in 401 KAR 30:031, Sections 5 and 6 of 401 KAR 47:030, or Section 8 of 401 KAR 34:060;

(b) An increase in the concentration of that substance in the groundwater where the existing concentration of that substance exceeds the maximum contaminant level specified in 401 KAR 30:031, 401 KAR 47:030, or Section 8 of 401 KAR 34:060; or

(c) A significant increase above established background levels, for substances that do not have an established maximum contamination level.

(48) "Contamination" means the degradation of naturally occurring water, air, or soil quality either directly or indirectly as a result of human activities.

(49) "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in the event of a fire, explosion, or release of waste or waste constituents into the environment which has the potential for endangering human health and the environment. Financial planning to identify resources for initiation of such action is a part of contingency plan development.

(50) "Continuous recorder" means a data recording device recording an instantaneous data value at least once every 15 minutes.

(51) "Control device shutdown" means the cessation of operation

of a control device for any purpose.

(52) "Control device" means an enclosed combustion device, vapor recovery system, or flare. Any device the primary function of which is the recovery or capture of solvents or other organics for use, reuse, or sale (for example, a primary condenser on a solvent recovery unit) is not a control device.

(53) "Corrective action management unit" or "CAMU" means an area within a facility that is designated by the cabinet under 401 KAR 34:287, for the purpose of implementing corrective action requirements under Section 12 of 401 KAR 34:060 and KRS 224.46-520. A CAMU shall only be used for the management of remediation wastes pursuant to implementing such corrective action requirements at the facility.

(54) "Cover" means a device or system which is placed on or over a hazardous waste such that the entire hazardous waste surface area is enclosed and sealed to reduce air emissions to the atmosphere. A cover may have openings such as access hatches, sampling ports, and gauge wells that are necessary for operation, inspection, maintenance, or repair of the unit on which the cover is installed provided that each opening is closed and sealed when not in use. Examples of covers include a fixed roof installed on a tank, a floating membrane cover installed on a surface impoundment, a lid installed on a drum, and an enclosure in which an open container is placed during waste treatment.

(55) "Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(56) "Current closure and postclosure cost estimates" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:090 or Section 1(1), (2) and (3) of 401 KAR 35:090.

(57) "Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

(58) "Current plugging and abandonment cost estimates" as used in subsection (1) of this section refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer (see 40 CFR 144.70(f)).

(59) "Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 40 CFR 144.62(a), (b), and (c).

(60) "Current postclosure cost estimate" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:100 or Section 1(1), (2) and (3) of 401 KAR 35:100.

(61) "Debris" means solid material exceeding a 60mm particle size that is intended for disposal and that is: a manufactured object; plant or animal matter; or natural geologic material. However, the following materials are not debris: Any material for which a specific treatment standard is provided in 401 KAR 37:040, namely lead acid batteries, cadmium batteries, and radioactive lead soils; Process residuals such as smelter slag and residues from the treatment of waste, wastewater, sludges, or air emission residues; and intact containers of hazardous waste that are not ruptured and that retain at least seventy-five (75) percent of their original volume. A mixture of debris that has not been treated to the standards provided by Section 6 of 401 KAR 37:040 and other material is subject to regulation as debris if the mixture is comprised primarily of debris, by volume, based on visual inspection.

(62) "Designated facility" means a hazardous waste treatment, storage, or disposal facility which:

(a) Has received a hazardous waste site or facility permit (or a facility with interim status) in accordance with the requirements of 401 KAR Chapter 38;

(b) Has received a permit from a state authorized in accordance with 40 CFR Part 271, and EPA permit (or a facility with interim status) in accordance with 40 CFR Parts 270 and 124; or

(c) Is regulated under Section 6(3)(b) of 401 KAR 31:010 or 401 KAR Chapter 36, 40 CFR 261.6(c)(2) or 40 CFR Part 266, and that has been designated on the manifest by the generator pursuant to Section 1 of 401 KAR 32:020. If a waste is destined to a hazardous waste site or facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility shall be a facility allowed by the receiving state to accept that waste.

(63) "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in Section 4(1) and (3) of 401 KAR 43:020 and Section 4(1) and (3) of 401 KAR 43:030. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

(64) "Destruction or adverse modification" means an alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

(65) "Dike" means an embankment or ridge of either natural or manmade materials used to prevent the movement of liquids, sludges, solids, or other materials.

(66) "Direct transfer equipment" means any device (including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps) that is used to distribute, meter, or control the flow of hazardous waste between a container (for example, transport vehicle) and a boiler or industrial furnace.

(67) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

(68) "Disposal" shall have the meaning specified in KRS 224.01-010.

(69) "Distillate receiver" means a container or tank used to receive and collect liquid material (condensed) from the overhead condenser of a distillation unit and from which the condensed liquid is pumped to larger storage tanks or other process units.

(70) "Distillation operation" means an operation, either batch or continuous, separating one (1) or more feed stream(s) into two (2) or more exit streams, each exit stream having component concentrations different from those in the feed stream(s). The separation is achieved by the redistribution of the components between the liquid and vapor phase as they approach equilibrium within the distillation unit.

(71) "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(72) "Double block and bleed system" means two (2) block valves connected in series with a bleed valve or line that can vent the line between the two (2) block valves.

(73) "Draft permit" shall have the same meaning as "proposed permit".

(74) "Drip pad" means an engineered structure consisting of a curbed, free-draining base, constructed of nonearthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(75) "Effluent limitations" shall have the same meaning as KRS 224.01-010.

(76) "Elementary neutralization unit" means a device which:

(a) Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in Section 3 of 401 KAR 31:030, or they are listed in 401 KAR 31:040 only for this reason; and

(b) Meets the definition of tank, tank system, container, transport vehicle, or vessel in this section.

(77) "Emergency permit" means a permit issued by the cabinet to temporarily store, treat or dispose of hazardous waste in accordance

with the provisions of Section 2 of 401 KAR 38:060, to temporarily manage, process, or dispose of a solid waste in accordance with the provisions of Section 2 of 401 KAR 47:150 or to temporarily store, treat, or dispose of special waste in accordance with the provisions of Section 1 of 401 KAR 45:135.

(78) "Endangered or threatened species" means any species listed as such pursuant to Section 4 of the Endangered Species Act, as amended, 16 USC 1536.

(79) "Engineer" shall have the meaning specified in KRS 322.010. An independent, professional engineer shall be registered in Kentucky pursuant to KRS 322.040 and shall be qualified to engage in waste management engineering practices.

(80) "EPA acknowledgment of consent" means the cable sent to EPA from the U.S. Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

(81) "EPA hazardous waste number" means the number assigned by EPA and the cabinet to each hazardous waste listed in 401 KAR 31:040, and to each characteristic identified in 401 KAR 31:030.

(82) "EPA identification number" means the number assigned by EPA or the cabinet to each generator; transporter; or treatment, storage, or disposal facility.

(83) "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice and which has a channel bottom that is always above the local water table.

(84) "Equipment" means each valve, pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, or flange, and any control devices or systems required by this administrative regulation.

(85) "Equivalent method" means any testing or analytical method, approved jointly by the administrator and the secretary under 401 KAR Chapter 31, or methods in 401 KAR Chapters 47 and 48, approved by the secretary of the cabinet.

(86) "Existing" indicates a boiler or industrial furnace that on or before August 21, 1991 is either in operation burning, or processing hazardous waste or for which construction (including the ancillary facilities to burn or to process the hazardous waste) has commenced.

(87) "Existing component" shall have the same meaning as "existing tank system."

(88) "Existing facility" shall have the same meaning as "existing hazardous waste site or facility".

(89) "Existing hazardous waste site or facility" means a hazardous waste facility which was in operation, or for which continuous construction had commenced, on or before November 19, 1980. A facility has commenced construction if:

(a) The owner or operator had obtained the federal, state and local approvals or permits necessary to begin physical construction; and

(b) Either:

1. A continuous on-site, physical construction program has begun;

or

2. The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the facility to be completed within a reasonable time.

(90) "Existing portion" means that land surface area of an existing hazardous waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

(91) "Existing tank system" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or

installation of the tank system and if either:

(a) A continuous on-site physical construction or installation program has begun; or

(b) The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the site or installation of the tank system to be completed within a reasonable time.

(92) "External floating roof" means a pontoon or double-deck type floating roof that rests on the surface of a hazardous waste being managed in a tank that has no fixed roof.

(93) "Face amount" means the total amount the insurer is obligated to pay under the policy.

(94) "Facility" means:

(a) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one (1) or more landfills, surface impoundments, or combinations of them).

(b) For the purpose of implementing corrective action under Section 12 of 401 KAR 34:060, all contiguous property under the control of the owner or operator seeking a hazardous waste permit. This definition also applies to facilities implementing corrective action under KRS 224.46-520.

(95) "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation, and the United States Government Printing Office.

(96) "Federal, state, and local approvals or permits necessary to begin physical construction" means permits and approvals required under federal, state, or local hazardous waste control statutes, administrative regulations, or ordinances.

(97) "Final closure" of a hazardous waste site or facility means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under 401 KAR Chapters 34 and 35 are no longer conducted at the facility unless subject to the provisions in Section 5 of 401 KAR 32:030.

(98) "First attempt at repair" means to take rapid action for the purpose of stopping or reducing leakage of organic material to the atmosphere using best practices.

(99) "Fiscal year" means a twelve (12) month period for accounting and other financial purposes.

(100) "Fixed roof" means a rigid cover that is installed in a stationary position so that it does not move with fluctuations in the level of the hazardous waste placed in a tank.

(101) "Flame zone" means the portion of the combustion chamber in a boiler occupied by the flame envelope.

(102) "Floating membrane cover" means a cover consisting of a synthetic flexible membrane material that rests upon and is supported by the hazardous waste being managed in a surface impoundment.

(103) "Floating roof" means a pontoon-type or double-deck type cover that rests upon and is supported by the hazardous waste being managed in a tank, and is equipped with a closure seal or seals to close the space between the cover edge and the tank wall.

(104) "Flood plain" means areas adjoining inland waters which are inundated by the base flood, unless otherwise specified in 401 KAR 30:031 or 401 KAR 47:030, and includes: 100-year floodplain and floodway.

(105) "Floodway" means the channel of the waterway, stream or river and that portion of the adjoining floodplain which provides for passage of the 100-year flood flow without increasing the floodwater depth across the 100-year floodplain by more than one (1) foot.

(106) "Flow indicator" means a device that indicates whether gas flow is present in a vent stream.

(107) "Food chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(108) "Fractionation operation" means a distillation operation or method used to separate a mixture of several volatile components of different boiling points in successive stages, each stage removing from the mixture some proportion of one (1) of the components.

(109) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(110) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.

(111) "Generator" shall have the meaning specified in KRS 224.01-010.

(112) "Governing Body" shall have the same meaning as KRS 224.01-010.

(113) "Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.

(114) "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table, and perched water zones below the B-soil horizon, including water circulating through fractures, bedding planes, and solution conduits.

(115) "Halogenated organic compounds" or "HOCs" means those compounds having a carbon-halogen bond that are listed under 401 KAR 37:110.

(116) "Hazardous constituent" shall have the meaning specified in KRS 224.01-010.

(117) "Hazardous waste constituent" means a constituent which caused the cabinet to list the hazardous waste in 401 KAR 31:040, or a constituent listed in Section 5(3) of 401 KAR 31:030.

(118) "Hazardous waste management unit shutdown" means a work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit. An unscheduled work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit for less than twenty-four (24) hours is not a hazardous waste management unit shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping operation are not hazardous waste management unit shutdowns.

(119) "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed. Hazardous waste management units include: aboveground tank; component; existing tank system or existing component; in-ground tank; new tank system or new tank component; on-ground tank; tank system; underground tank; or unfit-for-use tank system.

(120) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

(121) "Hazardous waste site or facility" means any place at which hazardous waste is treated, stored, or disposed of by landfilling, incineration, or any other method. Hazardous waste site or facility includes: boiler; disposal facility; elementary neutralization unit; incinerator; industrial furnace; hazardous waste transfer facility; injection well; landfill; land treatment facility; miscellaneous unit; pile or waste pile; replacement unit; storage facility; sludge dryer; surface impoundment; tank; thermal treatment facility; totally enclosed treatment facility; treatment facility; or wastewater treatment unit.

(122) "Hazardous waste transfer facility" means any transportation related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

(123) "Hazardous waste" shall have the meaning specified in KRS 224.01-010.

(124) "Holocene" means the most recent epoch of the quaternary period, extending from the end of the pleistocene to the present.

(125) "Hot well" means a container for collecting condensate as in a steam condenser serving a vacuum-jet or steam-jet ejector.

(126) "Household waste" means any waste material (including garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

(127) "In existence" shall have the same meaning as "existing."

(128) "In gas service" means that the piece of equipment contains or contacts a hazardous waste stream that is in the gaseous state at operating conditions.

(129) "In heavy liquid service" means that the piece of equipment is not in gas service or in vapor service or in light liquid service.

(130) "In light liquid service" means that the piece of equipment contains or contacts a waste stream where the vapor pressure of one (1) or more of the components in the stream is greater than three-tenths (0.3) kilopascals (kPa) at twenty (20) degrees Centigrade, the total concentration of the pure components having a vapor pressure greater than three-tenths (0.3) kPa at twenty (20) degrees Centigrade is equal to or greater than twenty (20) percent by weight, and the fluid is a liquid at operating conditions.

(131) "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

(132) "In situ sampling systems" means nonextractive samplers or in-line samplers.

(133) "In vacuum service" means that equipment is operating at an internal pressure that is at least 5 kPa below ambient pressure.

(134) "In vapor service" shall have the same meaning as "in gas service."

(135) "In-ground tank" means a device meeting the definition of "tank" in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(136) "Inactive portion" means that portion of a hazardous waste site or facility which was not operated after November 19, 1980.

(137) "Incinerator" means any enclosed device that:

(a) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or (b) Meets the definition of infrared incinerator or plasma arc incinerator.

(138) "Incompatible waste" means a hazardous waste which is unsuitable for placement in a particular device or facility because it may cause corrosion or decay of containment materials, or unsuitable for commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(139) "Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

(140) "Individual generation site" means the contiguous site at or on which one (1) or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one (1) or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

(141) "Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

- (a) Cement kilns;
- (b) Lime kilns;
- (c) Aggregate kilns;

(d) Phosphate kilns;
 (e) Coke ovens;
 (f) Blast furnaces;
 (g) Smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);
 (h) Titanium dioxide chloride process oxidation reactors;
 (i) Methane reforming furnaces;
 (j) Pulping liquor recovery furnaces;
 (k) Combustion devices used in the recovery of sulfur values from spent sulfuric acid;
 (l) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least three (3) percent, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of twenty (20) percent as generated; or
 (m) Other devices as the cabinet may, after notice and comment, add to this list on the basis of criteria and Section 5 of 401 KAR 30:080.

(142) "Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(143) "Injection well" means a well into which fluids are injected to achieve subsurface emplacement.

(144) "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained hazardous waste or reagents used to treat the hazardous waste.

(145) "Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of a hazardous waste management unit including tank systems.

(146) "Interim status" means the designation of a hazardous waste site or facility which was in existence on November 19, 1980, and has submitted a Part A application under 401 KAR Chapter 38 or under 40 CFR Part 270 and is treated as having a permit until final administrative disposition of the application is made.

(147) "Intermittent stream" means a stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year.

(148) "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

(149) "Internal floating roof" means a floating roof that rests or floats on the surface (but not necessarily in complete contact with it) of a hazardous waste being managed in a tank that has a fixed roof.

(150) "IUC Well" means a underground injection control well as provided in 40 CFR Part 144.

(151) "Karst terrain" means a type of topography where limestone, dolomite or gypsum is present and is characterized by naturally occurring closed topographic depressions or sinkholes, caves, disrupted surface drainage, and well developed underground solution channels formed by dissolution of these rocks by water moving underground.

(152) "Key personnel" shall have the meaning specified in KRS 224.01-010.

(153) "Lab pack" means any large container equal to or smaller than fifty-five (55) gallons that holds many smaller containers of various content tightly secured with packing material.

(154) "Lamp" means the bulb or tube portion of a lighting device specifically designed to produce radiant energy, most often in the ultraviolet (UV), visible, and infrared (IR) regions of the electromagnetic spectrum. Examples of common lamps include, but is not limited

to, incandescent, fluorescent, high pressure sodium, mercury vapor, metal halide, high intensity discharge, and neon lamps.

(155) "Land disposal" shall have the meaning specified in KRS 224.01-010.

(156) "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface. These facilities are disposal facilities if the waste will remain after closure.

(157) "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

(158) "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(159) "Large Quantity Handler of Universal Waste" means a universal waste handler who accumulates 5,000 kilograms or more total universal waste (batteries, lamps, pesticides, or thermostats, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total of universal waste is accumulated.

(160) "Leachate" means any liquid including any suspended components in the liquid, that has percolated through or drained from waste.

(161) "Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment system or the presence of a release of hazardous waste, hazardous waste constituents or accumulated liquid in the secondary containment system. Such a system shall employ operational controls (daily visual inspections for releases into the secondary containment system of above-ground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment system or the presence of a release of hazardous waste constituents or accumulated liquids into the secondary containment system.

(162) "Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

(163) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(164) "Liner" means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, ground water, or surface water at any time during the active life of the facility.

(165) "Liquid-mounted seal" means a foam or liquid-filled primary seal mounted in contact with the hazardous waste between the tank wall and the floating roof continuously around the circumference of the tank.

(166) "Local government" means the fiscal court of the county, urban-county government, or governing body of an incorporated municipality wherein a hazardous waste landfill or other site or facility for the land disposal of hazardous waste is proposed.

(167) "Major modification" means for hazardous waste sites or facilities, a change in ownership where the cabinet determines that other changes in the permit are necessary as a result of the change in ownership or operational control, area occupied, disposal method, or other significant change in the operation of a waste site or facility (Note: Minor modifications are described in Section 3 of 401 KAR 38:040).

(168) "Malfunction" means any sudden failure of a control device

or a hazardous waste management unit or failure of a hazardous waste management unit to operate in a normal or usual manner, so that organic emissions are increased.

(169) "Manifest document number" means the EPA twelve (12) digit identification number assigned to the generator plus a unique, serially increasing, five (5) digit document number assigned to the manifest by the generator for recordkeeping and reporting purposes.

(170) "Manifest" shall have the meaning specified in KRS 224.01-010.

(171) "Maximum organic vapor pressure" means the equilibrium partial pressure exerted by the hazardous waste contained in a tank determined at the temperature equal to either:

(a) The local maximum monthly average temperature as reported by the National Weather Service when the hazardous waste is stored or treated at ambient temperature; or

(b) The highest calendar-month average temperature of the hazardous waste when the hazardous waste is stored at temperatures above the ambient temperature or when the hazardous waste is stored or treated at temperatures below the ambient temperature.

(172) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

(173) "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of, and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR Part 146, containment building, corrective action management unit, or unit eligible for a research, development, and demonstration permit under Section 6 of 401 KAR 38:060.

(174) "Monitoring well" means a well used to obtain water samples for water quality and quantity analysis and groundwater levels.

(175) "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.

(176) "Movement" means that hazardous waste transported to a facility in an individual vehicle.

(177) "Net working capital" means current assets minus current liabilities.

(178) "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

(179) "New tank component" shall have the same meaning as "new tank system."

(180) "New tank system" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation commenced after July 14, 1986; however, for purposes of Section 4(7)(b) of 401 KAR 34:190 and Section 4(7)(b) of 401 KAR 35:190, a new tank system is one for which construction commenced after July 14, 1986.

(181) "New" means any hazardous waste site or facility that commenced construction after November 19, 1980.

(182) "No detectable organic emissions" means no escape of organics from a device or system to the atmosphere as determined by an instrument reading less than 500 parts per million by volume (ppmv) above the background level at each joint, fitting, and seal when measured in accordance with the requirements of Method 21 in 40 CFR part 60, appendix A, and by no visible openings or defects in the device or system such as rips, tears, or gaps.

(183) "Nonsudden accidental occurrence" means an occurrence that takes place over time and involves continuous or repeated exposure.

(184) "Nonwastewaters" means wastes that do not meet the criteria for wastewaters found in the definition for wastewaters.

(185) "Not detected" means at or below the lower method calibration limit (MCL) in SW-846, Method 8290, Table 1.

(186) "Off-site" means properties noncontiguous to the site.

(187) "On-site" means on the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing, as opposed to going along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access is also considered on-site property.

(188) "Onground tank" means a device meeting the definition of tank that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(189) "Open burning" means the combustion of any material or solid waste without:

(a) Control of combustion air to maintain adequate temperature for efficient combustion;

(b) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(c) Control of emission of the gaseous combustion products.

(190) "Open-ended valve or line" means any valve, except pressure relief valves, having one (1) side of the valve seat in contact with process fluid and one (1) side open to the atmosphere, either directly or through open piping.

(191) "Operational plan" means the approved plan of operations filed with the cabinet which describes the method of operation that the permittee will use in the treatment, storage, or disposal of wastes.

(192) "Operator" means any person responsible for overall operation of an on-site or off-site waste facility, including any private contractor conducting operational activities at a federal facility.

(193) "Other site or facility for the land disposal of hazardous waste" means a disposal facility but shall not include a storage facility or a treatment facility.

(194) "Owner" means any person who owns an on-site or off-site waste facility, or any part of a facility.

(195) "Parent corporation" means a corporation which directly owns at least fifty (50) percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

(196) "Part A of the application" or "Part A" means the standard forms or format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:080.

(197) "Part B of the application" or "Part B" means the standard format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:090 to 401 KAR 38:210.

(198) "Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of 401 KAR Chapters 34 and 35 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

(199) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface run-off. The term does not include "intermittent stream" or "ephemeral stream".

(200) "Permit by rule" means authorization allowing certain classes of sites or facilities to manage waste consistent with 401 KAR Chapters 30 to 49, without submission of a registration or permit application to the cabinet. Examples of hazardous waste sites or facilities which are permitted by rule include facilities operating under an interim status permit and facilities identified in Section 1 of 401 KAR 38:060.

(201) "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste

management administrative regulations. The term permit includes permit-by-rule, registered permit-by-rule, research, development, and demonstration permit, and emergency permit. However, the term permit does not include draft permit or proposed permit.

(202) "Permittee" means any person holding a valid permit issued by the cabinet to manage, treat, store, or dispose of waste.

(203) "Person" shall have the meaning specified in KRS 224.01-010.

(204) "Personnel" or "facility personnel" means all persons who work at or oversee the operations of a waste facility, and whose actions or failure to act may result in noncompliance with the requirements of the waste management administrative regulations.

(205) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(a) Is a new animal drug under FFDCA section 201(w); or

(b) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug; or

(c) Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by paragraph (a) or (b) of this subsection.

(206) "Pile" or "waste pile" means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

(207) "Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame and which is not listed as an industrial furnace.

(208) "Point of compliance" means for solid waste site and facilities, groundwater monitoring wells located within 250 feet of the waste boundary as approved by the cabinet.

(209) "Point of waste origination" means as follows:

(a) When the facility owner or operator is the generator of the hazardous waste, the point of waste origination means the point where a solid waste produced by a system, process, or waste management unit is determined to be a hazardous waste as defined in 40 CFR part 261.

(b) When the facility owner and operator are not the generator of the hazardous waste, point of waste origination means the point where the owner or operator accepts delivery or takes possession of the hazardous waste.

(210) "Point of waste treatment" means the point where a hazardous waste exits a waste management unit used to destroy, degrade, or remove organics in the hazardous waste.

(211) "Point source" means any discernible, confined, and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(212) "Pollutant" shall have the same meaning as KRS 224.01-010.

(213) "Polychlorinated biphenyls" or "PCB" means halogenated organic compounds defined in accordance with 40 CFR 761.2 as of July 1989.

(214) "Postclosure care" means the manner in which a facility shall be maintained when it no longer accepts waste for disposal.

(215) "Postclosure monitoring and maintenance" shall have the meaning specified in KRS 224.01-010.

(216) "Postclosure plan" means the plan for postclosure care prepared in accordance with the requirements of Sections 8 to 11 of 401 KAR 34:070 or Sections 8 to 11 of 401 KAR 35:070.

(217) "Pressure release" means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device.

(218) "Primary exporter" means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with Section 1 of 401 KAR 32:020 which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

(219) "Process heater" means a device that transfers heat liberated by burning fuel to fluids contained in tubes, including all fluids except water that are heated to produce steam.

(220) "Process vent" means any open-ended pipe or stack that is vented to the atmosphere either directly, through a vacuum-producing system, or through a tank (distillate receiver, condenser, bottoms receiver, surge control tank, separator tank, or hot well) associated with hazardous waste distillation fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations.

(221) "Property damage" shall have the meaning given by applicable Kentucky statutes. Property damage does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for property damage.

(222) "Proposed permit" means a document prepared by the cabinet indicating the cabinet's tentative decision to issue or deny, modify, revoke or terminate a permit.

(223) "Publicly owned treatment works" or "POTW" shall have the meaning specified in KRS 224.01-010.

(224) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump.

(225) "Qualified groundwater scientist" means a geologist registered in Kentucky who has received a baccalaureate or postgraduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields to enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

(226) "Receiving country" means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal (except short-term storage incidental to transportation).

(227) "Recharge zone" means an area supplying the water which enters an underground drinking water source.

(228) "Reclaimed" means a material that is processed to recover a usable product, or that is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents.

(229) "Recovered material" shall have the meaning specified in KRS 224.01-010.

(230) "Recyclable materials" means hazardous wastes that are recycled.

(231) "Recycled" means a material that is used, reused, or reclaimed.

(232) "Recycling" shall have the meaning specified in KRS 224.01-010.

(233) "Regional integrated waste treatment and disposal demonstration facility" shall have the meaning specified in KRS 224.01-010.

(234) "Regulated unit" means hazardous waste land disposal sites or facilities, or portions of existing hazardous waste land disposal sites or facilities that continued to receive waste after January 26, 1983.

(235) "Remediation waste" means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under Section 12 of 401 KAR 34:060 and KRS 224.46-520. For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing KRS 224.46-520 for releases beyond the facility boundary.

(236) "Repaired" means that equipment is adjusted, or otherwise altered, to eliminate a leak.

(237) "Replacement unit" means a landfill, surface impoundment, or waste pile unit from which all or substantially all of the waste is removed, and that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or approved corrective action.

(238) "Representative sample" means a sample of a universe or whole (for example, waste pile, lagoon, or groundwater) which can be expected to exhibit the average properties of the universe or whole.

(239) "Research, development, and demonstration permit" means a permit issued by the cabinet for a hazardous waste treatment facility that utilizes an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under 401 KAR Chapters 34 through 36.

(240) "Resource recovery" means the recovery of material or energy from waste.

(241) "Run-off" means any rainwater, leachate, or other liquid that drains overland from any part of a facility.

(242) "Run-on" means any rainwater, leachate, or other liquid that drains overland onto any part of a facility.

(243) "Saturated zone" shall have the same meaning as "zone of saturation".

(244) "Schedule of compliance" means a schedule of remedial measures included in a permit or cabinet order, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with KRS Chapter 224 and 401 KAR Chapters 30 to 49.

(245) "Scrap metal" is bits and pieces of metal parts (for example, bars, turnings, rods, sheets, or wire) or metal pieces that may be combined together with bolts or soldering (for example, radiators, scrap automobiles, or railroad boxcars), which when worn or superfluous can be recycled.

(246) "Secretary" shall have the meaning specified in KRS 224.01-010.

(247) "Sensor" means a device that measures a physical quantity or the change in a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

(248) "Separator tank" means a device used for separation of two immiscible liquids.

(249) "Sewage system" shall have the meaning specified in KRS 224.01-010.

(250) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the waste facility or activity.

(251) "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 BTU per pound of sludge treated on a wet-weight basis.

(252) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.

(253) "Small quantity generator" means a generator who generates more than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month.

(254) "Small quantity handler of universal waste" means a universal waste handler who does not accumulate more than 5,000 kilograms of universal waste (batteries, lamps, pesticides, or thermostats, collected collectively) at any time.

(255) "Solid waste management unit" shall mean any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at a facility at which

solid wastes have been routinely and systematically released.

(256) "Solvent extraction operation" means an operation or method of separation in which a solid or solution is contacted with a liquid solvent (the two (2) being mutually insoluble) to preferentially dissolve and transfer one (1) or more components into the solvent.

(257) "Sorb" means to either adsorb, absorb, or both.

(258) "Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both.

(259) "Spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

(260) "Spill" means any accidental spilling, leaking, pumping, pouring, emitting, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes into or on any land or water.

(261) "Start-up" means the setting in operation of a hazardous waste management unit or control device for any purpose.

(262) "State" means any of the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands or Guam but does not include any foreign country.

(263) "Steam stripping operation" means a distillation operation in which vaporization of a volatile constituents of a liquid mixture takes place by the introduction of steam directly into the charge.

(264) "Storage facility" means a facility or part of a facility at which hazardous waste is held for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere. A generator who accumulates his own hazardous wastes in an approved manner for less than ninety (90) days for subsequent transport on site or off site is not operating or maintaining a storage facility.

(265) "Storage of hazardous waste" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed, or stored elsewhere.

(266) "Storage" shall have the meaning specified in KRS 224.01-010.

(267) "Substantial business relationship" means the extent of a business relationship necessary to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" shall arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the cabinet.

(268) "Sudden accidental occurrence" means an occurrence which is not continuous or repeated in nature.

(269) "Sump" means any pit or reservoir that meets the definition of tank, and those troughs and trenches connected to it, that serves to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile administrative regulations, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(270) "Surface impoundment" means a facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(271) "Surge control tank" means a large-sized pipe or storage reservoir sufficient to contain the surging liquid discharge of the process tank to which it is connected.

(272) "Tangible net worth" means the tangible assets that remain after deducting liabilities; these assets would not include intangibles such as goodwill and rights to patents or royalties.

(273) "Tank" means a stationary device designed to contain an accumulation of hazardous waste that is constructed primarily of

nonearthen materials (for example, wood, concrete, steel, or plastic) which provide structural support and which does not meet the definition of any other unit.

(274) "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

(275) "Termination" shall have the meaning specified in KRS 224.01-010.

(276) "The full amount of the liability coverage to be provided" means the amount of coverage for sudden and nonsudden occurrences required to be provided by the owner or operator, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(277) "Thermal treatment facility" means a facility or part of a facility which uses elevated temperatures as the primary means to change the chemical, physical or biological character or composition of hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge.

(278) "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge (see also "incinerator" and "open burning").

(279) "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of Section 4(3)(b) of 401 KAR 43:020 or Section 4(3)(b) of 401 KAR 43:030.

(280) "Thin-film evaporation operation" means a distillation operation that employees a heating surface consisting of a large diameter tube that may be either straight or tapered, horizontal or vertical. Liquid is spread on the tube wall by a rotating assembly of blades that maintain a close clearance from the wall or actually ride on the film of liquid on the wall.

(281) "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which acid is neutralized.

(282) "Transit country" means any foreign country, other than a receiving country, through which a hazardous waste is transported.

(283) "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body is a separate transport vehicle.

(284) "Transportation" shall have the meaning specified in KRS 224.01-010.

(285) "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway or water.

(286) "Treatability study" means:

(a) A study in which a hazardous waste is subjected to a treatment process to determine:

1. Whether the waste is amenable to the treatment process;
2. What pretreatment, if any, is required;
3. The optimal process conditions needed to achieve the desired treatment;
4. The efficiency of a treatment process for a specific waste or wastes; or
5. The characteristics and volumes of residuals from a particular treatment process.

(b) For the purpose of 401 KAR 31:010, Section 4(5) and (6), exemptions are liner compatibility, corrosion, and other material

compatibility studies and toxicological and health effects studies.

(c) A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

(287) "Treatment facility" means a facility or part of a facility using any method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste nonhazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

(288) "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

(289) "Treatment" shall have the meaning specified in KRS 224.01-010.

(290) "Underground drinking water source" means:

(a) An aquifer supplying drinking water for human consumption; or

(b) An aquifer in which the groundwater contains less than 10,000 mg/l total dissolved solids.

(291) "Underground injection" means the subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well".)

(292) "Underground tank" means a device meeting the definition of "tank" in this section whose entire surface area is totally below the surface of and covered by the ground.

(293) "Underlying hazardous constituent" means any constituent listed in Section 1 of 401 KAR 37:040, Table - Treatment Standards for Hazardous Wastes, except vanadium and zinc, which can reasonably be expected to be present at the point of generation of the hazardous waste, at a concentration above the constituent-specific treatment standards.

(294) "Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

(295) "Universal Waste" means any of the following hazardous wastes that are subject to the universal waste requirements of 401 KAR Chapter 43:

(a) Batteries as described in Section 2 of 401 KAR 43:010;

(b) Pesticides as described in Section 3 of 401 KAR 43:010;

(c) Thermostats as described in Section 4 of 401 KAR 43:010; and

(d) Spent Lamps as described in Section 5 of 401 KAR 43:010.

(296) "Universal waste handler":

(a) Means:

1. A generator of universal waste; or

2. The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(b) Does not mean:

1. A person who treats (except under the provisions of Sections 4(1) or (3) of 401 KAR 43:020 or Sections 4(1) or (3) of 401 KAR 43:030), disposes of, or recycles universal waste; or

2. A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

(297) "Universal waste transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten (10) days or less.

(298) "Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or

water.

(299) "Unsaturated zone" shall have the same meaning as "Zone of aeration".

(300) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(301) "Used oil" shall have the same meaning as KRS 224.50-545.

(302) "Used or reused" means a material that is either:

(a) Employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one (1) process used as feedstock in another process). However, a material shall not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

(b) Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

(303) "Vapor incinerator" means any enclosed combustion device that is used for destroying organic compounds and does not extract energy in the form of steam or process heat.

(304) "Vapor recovery system" means that equipment, device, or apparatus capable of collecting vapors and gases discharged from a storage tank, and a vapor processing system capable of affecting such vapors and gases so as to prevent their emission into the atmosphere.

(305) "Vapor-mounted seal" means a foam-filled primary seal mounted continuously around the circumference of the tank so that there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the hazardous waste surface, and the floating roof.

(306) "Vented" means discharged through an opening, typically an open-ended pipe or stack, allowing the passage of a stream of liquids, gases, or fumes into the atmosphere. The passage of liquids, gases, or fumes is caused by mechanical means such as compressors or vacuum-producing systems or by process-related means such as evaporation produced by heating and not caused by tank loading and unloading (work losses) or by natural means such as diurnal temperature changes.

(307) "Vessel" means any watercraft used or capable of being used as a means of transportation on the water.

(308) "Volatile organic concentration" or "VO concentration" means the fraction by weight of organic compounds in a hazardous waste expressed in terms of parts per million (ppmw) as determined by direct measurement using Method 25D or by knowledge of the waste in accordance with the requirements of Section 4 of 401 KAR 35:040.

(309) "Washout" means the carrying away of waste by waters as a result of flooding.

(310) "Waste boundary" means the outermost perimeter of the waste (projected in the horizontal plane) as it would exist at completion of the disposal activity.

(311) "Waste determination" means performing all applicable procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine whether a hazardous waste meets standards specified in 401 KAR Chapter 35. Examples of a waste determination include performing the procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine the average VO concentration of a hazardous waste at the point of waste origination; the average VO concentration of a hazardous waste at the point of waste treatment and comparing the results to the exit concentration limit specified for the process used to treat the hazardous waste; determining the organic reduction efficiency and the organic biodegradation efficiency for a biological process used to treat

a hazardous waste and comparing the results to the applicable standards; or the maximum volatile organic vapor pressure for a hazardous waste in a tank and comparing the results to the applicable standards.

(312) "Waste pile" shall have the same meaning as "pile".

(313) "Waste stabilization process" means any physical or chemical process used to either reduce the mobility of hazardous constituents in a hazardous waste or eliminate free liquids as determined by Test Method 9095 (Paint Filter Liquids Test) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW-846, Third Edition, September 1986, as amended by Update I, November 15, 1992 (incorporated by reference-refer to § 260.11 of this chapter). A waste stabilization process includes mixing the hazardous waste with binders or other materials, and curing the resulting hazardous waste and binder mixture. Other synonymous terms used to refer to this process are "waste fixation" or "waste solidification."

(314) "Waste" shall have the meaning specified in KRS 224.01-010.

(315) "Wastewaters" means wastes that contain less than one (1) percent by weight total organic carbon (TOC) and less than one (1) percent by weight total suspended solids (TSS), with the following exceptions:

(a) F001, F002, F003, F004, F005, wastewaters are solvent-water mixtures that contain less than one (1) percent by weight TOC or less than one (1) percent by weight total F001, F002, F003, F004, F005 solvent constituents listed in Section 1 of 401 KAR 37:040 in Table Treatment Standards for Hazardous Waste;

(b) K011, K013, K014 wastewaters contain less than five (5) percent by weight TOC and less than one (1) percent by weight TSS, as generated; and

(c) K103 and K104 wastewaters contain less than four (4) percent by weight TOC and less than one (1) percent by weight TSS.

(316) "Wastewater treatment unit" means a device that:

(a) Is part of a wastewater treatment facility that is subject to administrative regulation under either section 402 or 307(b) of the CWA;

(b) Receives and treats or stores an influent wastewater which is a hazardous waste as defined in 401 KAR 31:010, Section 3; or generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in 401 KAR 31:010, Section 3; or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Section 3 of 401 KAR 31:010; and

(c) Meets the definition of tank or tank system in this administrative regulation.

(317) "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

(318) "Water" or "waters of the Commonwealth" shall have the meaning specified in KRS 224.01-010.

(319) "Well" means any shaft or pit dug or bored into the earth, generally of cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(320) "Wetlands" means land that has a predominance of hydric soils and is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(321) "Zone of aeration" means that region of the soil or rock between the land surface and the nearest saturated zone in which the interstices are occupied partially by air.

(322) "Zone of engineering control" means an area under the control of the owner or operator that upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to waters of the Commonwealth.

(323) "Zone of saturation" means that part of the earth's crust

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containing groundwater in which all voids, large and small, are filled with liquid.

Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by context, acronyms and abbreviations used in 401 KAR Chapter 35 shall have the meaning as identified in Table 1 of this administrative regulation.

Table 1. Acronyms and Abbreviations

Am.	Amended
C	Corrosive waste
CAA	Clean Air Act, as amended
CFR	Code of Federal Regulations
cm	Centimeter
cm ²	Centimeter squared
CO	Carbon monoxide
CO ₂	Carbon dioxide
CWA	Clean Water Act, as amended
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980
DOT	United States Department of Transportation
DRE	Destruction and removal efficiency
E	Explosive waste
eff.	Effective
EPA	United States Environmental Protection Agency
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act
FIA	Federal Insurance Administration
FR	Federal Register
H	Acutely hazardous waste
ha	Hectare
HTMR	High temperature metals recovery
HSWA	Hazardous and Solid Waste Amendments of 1994
I	Ignitable waste
KAR	Kentucky Administrative Regulation
kg	Kilogram
KPDES	Kentucky Pollution Discharge Elimination System
KRS	Kentucky Revised Statute
Ky.R.	Administrative Register of Kentucky
l	Liter
LC	Lethal concentration
LD	Lethal dose
ml	Milliliter
mm	Millimeter
N	Normal
NESHAPS	National Emissions Standards for Hazardous Air Pollutants
NPDES	National Pollutant and Discharge Elimination System
PCB	Polychlorinated biphenyl
pCi/l	Picocuries per liter
PHC	Principal hazardous constituent
Permit POHC	Permitted principal organic hazardous constituent
PM	Particulate matter
POHC	Principal organic hazardous constituent
ppm	parts per million
Trial POHC	Trial burn principal organic hazardous constituent
POTW	Publicly owned treatment works
PSD	Prevention of significant deterioration
psi	Pounds per square inch
psig	Pounds per square inch gauge
R	Reactive waste
RCRA	Resource Conservation and Recovery Act, as

	amended
SDWA	Safe Drinking Water Act, as amended
SEC	Securities and Exchange Commission
SIC	Standard Industrial Classification Code
SPCC	Spill Prevention, Control, and Countermeasures Plan
T	Toxic waste
UIC	Underground Injection Control
UICP	Underground Injection Control Program
USC	United States Code
U.S. EPA	United States Environmental Protection Agency
USGS	United States Geological Survey
USPS	United States Postal Service

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: This regulation does not affect any entities, because it only defines terms used in the chapter. The regulation was promulgated to comply with KRS 13A.222.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the

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extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The cabinet will experience no additional costs or savings by promulgating the amendments to this regulation.

2. Continuing costs or savings: No requirements have been imposed to affect costs and savings.

3. Additional factors increasing or decreasing costs: There will be no additional factors affecting costs.

b. Reporting and paperwork requirements: There will be no extra paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on the state and local revenue with the promulgation of this regulation.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No costs are imposed with the promulgation of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: There were no other alternatives.

8. Assessment of expected benefits of the administrative regulation: The benefit is having the definitions clearly stated at the beginning of each chapter.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Not applicable since no requirements are imposed.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? (Explain why tiering was or was not used): Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of hazardous waste generated or managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments establish definitions of hazardous waste terms and the clarification of certain definitions. This regulation is necessary to maintain consistency between state and federal programs. In addition, the regulation has been modified to reflect regulation construction specified in KRS 13A.222.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes. If yes, complete questions 2-4.

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that manages hazardous waste.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. This administrative regulation establishes definitions for all terms within 401 KAR Chapter 35. These terms are assimilated from existing state and federal regulatory definitions and existing statutory definitions where applicable.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): Because this administrative regulation only establishes definitions for 401 KAR Chapter 35, this administrative regulation will not affect state, county, or local expenditures.

Other Explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (New Administrative Regulation)

401 KAR 35:245. Containment buildings (IS).

RELATES TO: KRS 224.01, 224.10, 224.46, 40 CFR Part 265 Subpart DD

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520, 224.46-530

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-520 and 224.46-530 and to establish minimum standards for containment buildings.

Section 1. Applicability. The requirements of this administrative regulation apply to owners or operators who store or treat hazardous waste in units designed and operated under Section 2 of this administrative regulation. These provisions shall become effective on the effective date of this administrative regulation, although the owner

or operator may notify the cabinet of their intent to be bound by this administrative regulation at an earlier time. The owner or operator is not subject to the definition of land disposal in KRS 224.01-010 provided that the unit:

(1) Is a completely enclosed, self-supporting structure that is designed and constructed of manmade materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the units, and to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed; climatic conditions; and the stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls;

(2) Has a primary barrier that is designed to be sufficiently durable to withstand the movement of personnel and handling equipment within the unit;

(3) If the unit is used to manage liquids, has:

(a) A primary barrier designed and constructed of materials to prevent migration of hazardous constituents into the barrier;

(b) A liquid collection system designed and constructed of materials to minimize the accumulation of liquid on the primary barrier; and

(c) A secondary containment system designed and constructed of materials to prevent migration of hazardous constituents into the barrier, with a leak detection and liquid collection system capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest possible time, unless the unit has been granted a variance from the secondary containment system requirements under Section 2(2)(d) of this administrative regulation;

(4) Has controls as needed to prevent fugitive dust emissions to meet the no visible emission standard in Section 2(3)(a)4. of this administrative regulation; and

(5) Is designed and operated to ensure containment and prevent the migration of materials from the unit by personnel or equipment.

Section 2. Design and Operating Standards. (1) All containment buildings shall comply with the following design standards:

(a) The containment building shall be completely enclosed with a floor, walls, and a roof to prevent exposure to the elements, (for example, precipitation, wind, run-on), and to assure containment of managed wastes.

(b) The floor and containment walls of the unit, including the secondary containment system if required under subsection (2) of this section, shall be designed and constructed of materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the unit, and to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed; climatic conditions; and the stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls. The unit shall be designed so that it has sufficient structural strength to prevent collapse or other failure. All surfaces to be in contact with hazardous wastes shall be chemically compatible with those wastes. The cabinet will consider standards established by professional organizations generally recognized by the industry such as the American Concrete Institute (ACI) and the American Society of Testing Materials (ASTM) in judging the structural integrity requirements of this subsection. If appropriate to the nature of the waste management operation to take place in the unit, an exception to the structural strength requirement may be made for light-weight doors and windows that meet these criteria:

1. They provide an effective barrier against fugitive dust emissions under subsection (3)(a)4 of this section; and

2. The unit is designed and operated in a fashion that assures that wastes will not actually come in contact with these openings.

(c) Incompatible hazardous wastes or treatment reagents shall not

be placed in the unit or its secondary containment system if they may cause the unit or secondary containment system to leak, corrode, or otherwise fail.

(d) A containment building shall have a primary barrier designed to withstand the movement of personnel, waste, and handling equipment in the unit during the operating life of the unit and appropriate for the physical and chemical characteristics of the waste to be managed.

(2) For a containment building used to manage hazardous wastes containing free liquids or treated with free liquids (the presence of which is determined by the paint filter test, a visual examination, or other appropriate means), the owner or operator shall include:

(a) A primary barrier designed and constructed of materials to prevent the migration of hazardous constituents into the barrier (for example a geomembrane covered by a concrete wear surface).

(b) A liquid collection and removal system to prevent the accumulation of liquid on the primary barrier of the containment building:

1. The primary barrier shall be sloped to drain liquids to the associated collection system; and

2. Liquids and waste shall be collected and removed to minimize hydraulic head on the containment system at the earliest practicable time that protects human health and the environment.

(c) A secondary containment system including a secondary barrier designed and constructed to prevent migration of hazardous constituents into the barrier, and a leak detection system that is capable of detecting failure of the primary barrier and collecting accumulated hazardous wastes and liquids at the earliest practicable time.

1. The requirements of the leak detection component of the secondary containment system are satisfied by installation of a system that is, at a minimum:

a. Constructed with a bottom slope of one (1) percent or more; and

b. Constructed of a granular drainage material with a hydraulic conductivity of 1×10^{-2} cm/sec or more and a thickness of twelve (12) inches (30.5 cm) or more, or constructed of synthetic or geonot drainage materials with a transmissivity of 3×10^{-5} m²/sec or more.

2. If treatment is to be conducted in the building, an area in which such treatment will be conducted shall be designed to prevent the release of liquids, wet materials, or liquid aerosols to other portions of the building.

3. The secondary containment system shall be constructed of materials that are chemically resistant to the waste and liquids managed in the containment building and of sufficient strength and thickness to prevent collapse under the pressure exerted by overlaying materials and by any equipment used in the containment building. (Containment buildings can serve as secondary containment systems for tanks placed within the building under certain conditions. A containment building can serve as an external liner system for a tank, provided it meets the requirements of Section 4(4)(a) of 401 KAR 35:190. In addition, the containment building shall meet the requirements of Section 4(3)(a) and (b) of 401 KAR 35:190 to be considered an acceptable secondary containment system for a tank.)

(d) For existing units other than ninety (90) day generator units, the cabinet may delay the secondary containment requirement for up to two (2) years, based on a demonstration by the owner or operator that the unit substantially meets the standards of this administrative regulation. In making this demonstration, the owner or operator shall:

1. Provide written notice to the cabinet of their request within ninety (90) days of the effective date of this administrative regulation. This notification shall describe the unit and its operating practices with specific reference to the performance of existing containment systems, and specific plans for retrofitting the unit with secondary containment;

2. Respond to any comments from the cabinet on these plans within thirty (30) days; and

3. Fulfill the terms of the revised plans, if such plans are

approved by the cabinet.

(3) Owners or operators of all containment buildings shall:

(a) Use controls and practices to ensure containment of the hazardous waste within the unit; and, at a minimum:

1. Maintain the primary barrier to be free of significant cracks, gaps, corrosion, or other deterioration that may cause hazardous waste to be released from the primary barrier;

2. Maintain the level of the stored or treated hazardous waste within the containment walls of the unit so that the height of any containment wall is not exceeded;

3. Take measures to prevent the tracking of hazardous waste out of the unit by personnel or by equipment used in handling the waste. An area shall be designated to decontaminate equipment and any rinsate shall be collected and properly managed; and

4. Take measures to control fugitive dust emissions such that any openings (doors, windows, vents, cracks, etc.) exhibit no visible emissions (see 40 CFR Part 60, Appendix A, Method 22-Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares, incorporated by reference in 401 KAR 50:015 Section 1 (1)(c)(1)qq). In addition, all associated particulate collection devices (for example, fabric filter, electrostatic precipitator) shall be operated and maintained with sound air pollution control practices. This state of no visible emissions shall be maintained effectively at all times during normal operating conditions, including when vehicles and personnel are entering and exiting the unit.

(b) Obtain certification by a qualified registered professional engineer that the containment building design meets the requirements of subsections (1) through (3) of this section. For units placed into operation prior to February 18, 1993, this certification shall be placed in the facility's operating record (on-site files for generators who are not formally required to have operating records) no later than sixty (60) days after the date of initial operation of the unit. After February 18, 1993, Professional Engineer certification will be required prior to operation of the unit.

(c) Throughout the active life of the containment building, if the owner or operator detects a condition that may lead to or has caused a release of hazardous waste, the owner or operator shall repair the condition promptly, in accordance with the following procedures.

1. Upon detection of a condition that has led to a release of hazardous waste (for example, upon detection of leakage from the primary barrier) the owner or operator shall:

a. Enter a record of the discovery in the facility operating record;

b. Immediately remove the portion of the containment building affected by the condition from service;

c. Determine what steps shall be taken to repair the containment building, remove any leakage from the secondary collection system, and establish a schedule for accomplishing the cleanup and repairs; and

d. Within seven (7) days after the discovery of the condition, notify the cabinet of the condition, and within fourteen (14) working days, provide a written notice to the cabinet with a description of the steps taken to repair the containment building, and the schedule for accomplishing the work.

2. The cabinet will review the information submitted, make a determination regarding whether the containment building shall be removed from service completely or partially until repairs and cleanup are complete, and notify the owner or operator of the determination and the underlying rationale in writing.

3. Upon completing all repairs and cleanup the owner or operator shall notify the cabinet in writing and provide a verification, signed by a qualified, registered professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with subsection (3)(c)1d of this section.

(d) Inspect and record in the facility's operating record, at least once every seven (7) days, data gathered from monitoring equipment and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect

signs of releases of hazardous waste.

(4) For a containment building that contains both areas with and without secondary containment, the owner or operator shall:

(a) Design and operate each area in accordance with the requirements enumerated in subsections (1) through (3) of this section;

(b) Take measures to prevent the release of liquids or wet materials into areas without secondary containment; and

(c) Maintain in the facility's operating log a written description of the operating procedures used to maintain the integrity of areas without secondary containment.

(5) The cabinet may waive requirements for secondary containment for a permitted containment building where the owner or operator demonstrates that the only free liquids in the unit are limited amounts of dust suppression liquids required to meet occupational health and safety requirements, and where containment of managed wastes and liquids can be assured without a secondary containment system.

Section 3. Closure and Postclosure Care. (1) At closure of a containment building, the owner or operator shall remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless Section 3(4) of 401 KAR 31:010 applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for containment buildings shall meet all of the requirements specified in 401 KAR 35:070 and 35:080.

(2) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in subsection (1) of this section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he shall close the containment facility and perform postclosure care in accordance with the closure and postclosure requirements of Section 4 of 401 KAR 35:230 that apply to landfills. In addition, for the purposes of closure, postclosure, and financial responsibility, such a containment building is then considered to be a landfill, and the owner or operator shall meet all of the requirements for landfills specified in 401 KAR 35:070 and 35:080.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does

not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed amendments affect owners and operators of hazardous waste interim status facilities that store or treat hazardous waste in containment buildings.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: There are no costs or savings.

2. Continuing costs or savings: Not applicable.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs.

b. Reporting and paperwork requirements: There are no additional paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state or local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants are to be used for the implementation and enforcement of the regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were not considered. These changes are consistent with federal standards.

8. Assessment of expected benefits of the administrative regulation: These amendments provide consistency with current federal standards.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: The implementation of this regulation will improve public health and the environment across the Commonwealth.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Detrimental effects

could occur without the implementation of this regulation.

c. If detrimental effect would result, explain detrimental effect: Hazardous waste facilities that mismanage hazardous waste in containment buildings could cause harm to public health and the environment.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, policies, or regulations that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? (Explain why tiering was or was not used): Yes, tiering was applied. This administrative regulation applies to owners and operators of hazardous waste interim status facilities that use containment buildings, consistent with federal standards, to protect human health and the environment. Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of hazardous waste generated or managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed regulation adopts amendments that apply to storing or treating hazardous waste interim status facility. This regulation is necessary to maintain consistency between state and federal programs. This has been added to clarify the applicability of these amendments. In addition, the regulation has been modified to reflect the requirements of regulation construction specified in KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes. If yes, complete questions 2-4.

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that stores and treats hazardous waste in interim status containment buildings.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year

the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(New Administrative Regulation)**

401 KAR 35:281. Air emission standards for tanks, surface impoundments, and containers (IS).

RELATES TO: KRS 224.01, 224.10, 224.46, 40 CFR Part 265 Subpart AA

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520, 224.46-530

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-520 and 224.46-530 and to establish air emissions standards for tanks, surface impoundments, and containers.

Section 1. Applicability. (1) The requirements of this administrative regulation apply to owners and operators of all facilities that treat, store, or dispose of hazardous waste in tanks, surface impoundments, or containers subject to either 401 KAR 35:180, 35:190 or 35:200 except as Section 1 of 401 KAR 35:010 and subsection (2) of this section provide otherwise.

(2) The requirements of this administrative regulation do not apply to the following hazardous waste management units at the facility:

(a) A hazardous waste management unit that holds hazardous waste placed in the unit before the effective date of this administrative regulation, and in which no hazardous waste is added to the unit on or after this date.

(b) A container that has a design capacity less than or equal to 0.1 m³ (26.4 gallons).

(c) A tank in which an owner or operator has stopped adding hazardous waste and the owner or operator has begun implementing or completed closure pursuant to an approved closure plan.

(d) A surface impoundment in which an owner or operator has stopped adding hazardous waste (except to implement an approved closure plan) and the owner or operator has begun implementing or completed closure pursuant to an approved closure plan.

(e) A hazardous waste management unit that is used solely for on-site treatment or storage of hazardous waste that is generated as the result of implementing remedial activities required under the RCRA corrective action authorities of KRS 224.01-400 or KRS 224.46-530.

(f) A hazardous waste management unit that is used solely for the management of radioactive mixed waste in accordance with all applicable regulations under the authority of the Atomic Energy Act and the Nuclear Waste Policy Act.

(3) For the owner and operator of a facility subject to this administrative regulation who has received a final permit under KRS 224.46-520 prior to the effective date of this administrative regulation, the following requirements apply:

(a) The requirements of 401 KAR 34:281 shall be incorporated into the permit when the permit is reissued in accordance with the requirements of Section 12 of 401 KAR 38:050 or reviewed in

accordance with the requirements of Section 5(4) of 401 KAR 38:040.

(b) Until the date when the permit is reissued in accordance with the requirements of Section 12 of 401 KAR 38:050 or reviewed in accordance with the requirements of Section 5(4) of 401 KAR 38:040, the owner or operator is subject to the requirements of this administrative regulation.

(4) The requirements of this administrative regulation, except for the recordkeeping requirements specified in Section 10(9) of this administrative regulation, shall not apply to a tank or container used for the management of hazardous waste generated by organic peroxide manufacturing and its associated laboratory operations when the owner or operator of the unit meets all of the following conditions:

(a) The owner or operator identifies that the tank or container receives hazardous waste generated by an organic peroxide manufacturing process producing more than one functional family of organic peroxides or multiple organic peroxides within one functional family, that one (1) or more of these organic peroxides, could potentially undergo self-accelerating thermal decomposition at or below ambient temperatures, and that organic peroxides are the predominant products manufactured by the process. For the purpose of meeting the conditions of this paragraph, "organic peroxide" means an organic compound that contains the bivalent -O-O- structure and which may be considered to be a structural derivative of hydrogen peroxide where one (1) or both of the hydrogen atoms has been replaced by an organic radical.

(b) The owner or operator prepares documentation, in accordance with the requirements of Section 10(9) of this administrative regulation, explaining why an undue safety hazard would be created if air emission controls specified in Sections 5, 7, and 8 of this administrative regulation are installed and operated on the tanks and containers used at the facility to manage the hazardous waste generated by the organic peroxide manufacturing process or processes meeting the conditions of paragraph (a) of this subsection.

(c) The owner or operator notifies the cabinet in writing that hazardous waste generated by an organic peroxide manufacturing process or processes meeting the conditions of paragraph (a) of this subsection are managed at the facility in tanks or containers meeting the conditions of paragraph (b) of this subsection. The notification shall state the name and address of the facility, and be signed and dated by an authorized representative of the facility owner or operator.

Section 2. Schedule for Implementation of Air Emission Standards. (1) Owners or operators of facilities existing six (6) months after the effective date of this administrative regulation, and subject to 401 KAR 35:180, 35:190, and 35:200 shall meet the following requirements:

(a) Install and begin operation of all control equipment required by this administrative regulation within six (6) months after the effective date of this administrative regulation, except as provided for in paragraph (b) of this subsection.

(b) When control equipment required by this administrative regulation cannot be installed and in operation within six (6) months after the effective date of this administrative regulation, the owner or operator shall:

1. Install and begin operation of the control equipment as soon as possible but no later than December 8, 1997.

2. Prepare an implementation schedule that includes the following information: specific calendar dates for award of contracts or issuance of purchase orders for the control equipment, initiation of on-site installation of the control equipment, completion of the control equipment installation, and performance of any testing to demonstrate that the installed equipment meets the applicable standards of this administrative regulation.

3. For facilities subject to the recordkeeping requirements of Section 4 of 401 KAR 35:050, the owner or operator shall enter the implementation schedule specified in subparagraph 2. of this

paragraph in the operating record no later than six (6) months after the effective date of this administrative regulation.

4. For facilities not subject to Section 4 of 401 KAR 35:050, the owner or operator shall enter the implementation schedule specified in subparagraph 2 of this paragraph in a permanent, readily available file located at the facility no later than six (6) months after the effective date of this administrative regulation.

(2) Owners or operators of facilities in existence on the effective date of statutory or regulatory amendments that render the facility subject to 401 KAR 35:180, 35:190, or 35:200 shall meet the following requirements:

(a) Install and begin operation of all control equipment required by this administrative regulation by the effective date of the amendment except as provided for in paragraph (b) of this subsection.

(b) When control equipment required by this administrative regulation cannot be installed and begin operation by the effective date of the amendment, the owner or operator shall:

1. Install and operate the control equipment as soon as possible but no later than thirty (30) months after the effective date of the amendment.

2. For facilities subject to the recordkeeping requirements of Section 4 of 401 KAR 35:050, enter and maintain the implementation schedule specified in subsection (1)(b)2 of this section in the operating record no later than the effective date of the amendment; or

3. For facilities not subject to Section 4 of 401 KAR 35:050, the owner or operator shall enter and maintain the implementation schedule specified in subsection (1)(b)2 of this section in a permanent, readily available file located at the facility site no later than the effective date of the amendment.

(3) The cabinet may elect to extend the implementation date for control equipment at a facility, on a case-by-case basis, to a date later than December 8, 1997, when special circumstances that are beyond the facility owner's or operator's control delay installation or operation of control equipment and the owner or operator has made all reasonable and prudent attempts to comply with the requirements of this administrative regulation.

Section 3. Standards: General. (1) This section applies to the management of hazardous waste in tanks, surface impoundments, and containers subject to this administrative regulation.

(2) The owner or operator shall control air emissions from each hazardous waste management unit in accordance with standards specified in Section 5 through 8 of this administrative regulation, as applicable to the hazardous waste management unit, except as provided for in subsection (3) of this section.

(3) A hazardous waste management unit is exempted from standards specified in Section 5 through 8 of this administrative regulation provided that all hazardous waste placed in the hazardous waste management unit is determined by the owner or operator to meet either of the following conditions:

(a) The average volatile organic (VO) concentration of the hazardous waste at the point of waste origination is less than 100 parts per million by weight (ppmw). The average VO concentration shall be determined by the procedures specified in Section 4(1) of this administrative regulation.

(b) The organic content of the hazardous waste has been reduced by an organic destruction or removal process that achieves any one of the following conditions:

1. A process that removes or destroys the organics contained in the hazardous waste to a level such that the average VO concentration of the hazardous waste at the point of waste treatment is less than the exit concentration limit (C_e) established for the process. The average VO concentration of the hazardous waste at the point of waste treatment and the exit concentration limit for the process shall be determined using the procedures specified in Section 4(2) of this administrative regulation.

2. A process that removes or destroys the organics contained in the hazardous waste to a level such that the organic reduction efficiency (R) for the process is equal to or greater than ninety-five (95) percent, and the average VO concentration of the hazardous waste at the point of waste treatment is less than fifty (50) ppmw. The organic reduction efficiency for the process and the average VO concentration of the hazardous waste at the point of waste treatment shall be determined using the procedures specified in Section 4(2) of this administrative regulation.

3. A process that removes or destroys the organics contained in the hazardous waste to a level such that the actual organic mass removal rate (MR) for the process is greater than the required organic mass removal rate (RMR) established for the process. The required organic mass removal rate and the actual organic mass removal rate for the process shall be determined using the procedures specified in Section 4(2) of this administrative regulation.

4. A biological process that destroys or degrades the organics contained in the hazardous waste, such that either of the following conditions is met:

a. The organic reduction efficiency (R) for the process is equal to or greater than ninety-five (95) percent, and the organic biodegradation efficiency (R_{bio}) for the process is equal to or greater than ninety-five (95) percent. The organic reduction efficiency and the organic biodegradation efficiency for the process shall be determined in accordance with the procedures specified in Section 4(2) of this administrative regulation.

b. The total actual organic mass biodegradation rate (MR_{bio}) for all hazardous waste treated by the process is equal to or greater than the required organic mass removal rate (RMR). The required organic mass removal rate and the actual organic mass biodegradation rate for the process shall be determined using the procedures specified in Section 4(2) of this administrative regulation.

5. A process that removes or destroys the organics contained in the hazardous waste and meets all of the following conditions:

a. All of the materials entering the process are hazardous wastes.

b. From the point of waste origination through the point where the hazardous waste enters the process, the hazardous waste is continuously managed in hazardous waste management units that use air emission controls in accordance with the standards specified in Sections 5 through 8 of this administrative regulation, as applicable to the hazardous waste management unit.

c. The average VO concentration of the hazardous waste at the point of waste treatment is less than the lowest average VO concentration at the point of waste origination determined for each of the individual hazardous waste streams entering the process or 100 ppmw, whichever value is lower. The average VO concentration of each individual hazardous waste stream at the point of waste origination shall be determined using the procedure specified in Section 4(1) of this administrative regulation. The average VO concentration of the hazardous waste at the point of waste treatment shall be determined using the procedure specified in Section 4(2) of this administrative regulation.

6. A hazardous waste incinerator for which the owner or operator has either:

a. Been issued a final permit under 401 KAR Chapter 38, and designs and operates the unit in accordance with the requirements of 401 KAR 34:240; or

b. Has certified compliance with the interim status requirements of 401 KAR 35:240.

7. A boiler or industrial furnace for which the owner or operator has either:

a. Been issued a final permit under 401 KAR Chapter 38, and designs and operates the unit in accordance with the requirements of 401 KAR 36:020 and 36:025; or

b. Has certified compliance with the interim status requirements of 401 KAR 36:020.

(4) When a process is used for the purpose of treating a

hazardous waste to meet one (1) of the sets of conditions specified in subparagraphs (3)(b)1 through (3)(b)5 of this section, each material removed from or exiting the process that is not a hazardous waste but has an average VO concentration equal to or greater than 100 ppmw shall be managed in a hazardous waste management unit in accordance with the requirements of subsection (2) of this section.

(5) The cabinet may at any time perform or request that the owner or operator perform a waste determination for a hazardous waste managed in a tank, surface impoundment, or container exempted from using air emission controls under the provisions of this section as follows:

(a) The waste determination for average VO concentration of a hazardous waste at the point of waste origination shall be performed using direct measurement in accordance with the applicable requirements of Section 4(1) of this administrative regulation. The waste determination for a hazardous waste at the point of waste treatment shall be performed in accordance with the applicable requirements of Section 4(2) of this administrative regulation.

(b) In a case when the owner or operator is requested to perform the waste determination, the cabinet may elect to have an authorized representative observe the collection of the hazardous waste samples used for the analysis.

(c) In a case when the results of the waste determination performed or requested by the cabinet do not agree with the results of a waste determination performed by the owner or operator using knowledge of the waste, then the results of the waste determination performed in accordance with the requirements of subsection (5)(a) of this section shall be used to establish compliance with the requirements of this administrative regulation.

(d) In a case when the owner or operator has used an averaging period greater than one (1) hour for determining the average VO concentration of a hazardous waste at the point of waste origination, the cabinet may elect to establish compliance with this administrative regulation by performing or requesting that the owner or operator perform a waste determination using direct measurement based on waste samples collected within a 1-hour period as follows:

1. The average VO concentration of the hazardous waste at the point of waste origination shall be determined by direct measurement in accordance with the requirements of Section 4(1) of this administrative regulation.

2. Results of the waste determination performed or requested by the cabinet showing that the average VO concentration of the hazardous waste at the point of waste origination is equal to or greater than 100 ppmw shall constitute noncompliance with this administrative regulation except in a case as provided for in subparagraph 3 of this paragraph.

3. For the case when the average VO concentration of the hazardous waste at the point of waste origination previously has been determined by the owner or operator using an averaging period greater than one (1) hour to be less than 100 ppmw but because of normal operating process variations the VO concentration of the hazardous waste determined by direct measurement for any given one (1) hour period may be equal to or greater than 100 ppmw, information that was used by the owner or operator to determine the average VO concentration of the hazardous waste (for example, test results, measurements, calculations, and other documentation) and recorded in the facility records in accordance with the requirements of Section 4(1) of this administrative regulation shall be considered by the cabinet together with the results of the waste determination performed or requested by the cabinet in establishing compliance with this administrative regulation.

Section 4. Waste Determination Procedures. (1) Waste determination procedure for volatile organic (VO) concentration of a hazardous waste at the point of waste origination.

(a) An owner or operator shall determine the average VO concentration at the point of waste origination for each hazardous

waste placed in a hazardous waste management unit exempted under the provisions of Section 3(3)(a) of this administrative regulation from using air emission controls in accordance with standards specified in Sections 5 through 8 of this administrative regulation, as applicable to the hazardous waste management unit.

(b) When the facility owner or operator is the generator of the hazardous waste, the owner or operator shall determine the average VO concentration of the hazardous waste using either direct measurement as specified in paragraph (e) of this subsection or knowledge of the waste as specified in paragraph (f) of this subsection for each hazardous waste generated as follows:

1. When the hazardous waste is generated as part of a continuous process, the owner or operator shall:

a. Perform an initial waste determination of the average VO concentration of the waste stream before the first time any portion of the material in the waste stream is placed in a hazardous waste management unit subject to this administrative regulation, and thereafter update the information used for the waste determination at least once every twelve (12) months following the date of the initial waste determination; and

b. Perform a new waste determination whenever changes to the source generating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level that is equal to or greater than the applicable VO concentration limits specified in Section 3 of this administrative regulation.

2. When the hazardous waste is generated as part of a batch process that is performed repeatedly but not necessarily continuously, the owner or operator shall:

a. Perform an initial waste determination of the average VO concentration for one (1) or more representative waste batches generated by the process before the first time any portion of the material in the batches is placed in a hazardous waste management unit subject to this administrative regulation, and thereafter update the information used for the waste determination at least once every twelve (12) months following the date of the initial waste determination; and

b. Perform a new waste determination whenever changes to the process generating the waste batches are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level that is equal to or greater than the applicable VO concentration limits specified in Section 3 of this administrative regulation.

(c) When the facility owner and operator is not the generator of the hazardous waste, the owner or operator shall determine the average VO concentration of the hazardous waste using either direct measurement as specified in paragraph (e) of this subsection or knowledge of the waste as specified in paragraph (f) of this subsection for each hazardous waste entering the facility as follows:

1. When the hazardous waste enters the facility as a continuous flow of material through a pipeline or other means (for example, wastewater stream), the owner or operator shall:

a. Perform an initial waste determination of the waste stream before the first time any portion of the material in the waste stream is placed in a hazardous waste management unit subject to this administrative regulation, and thereafter update the information used for the waste determination at least once every twelve (12) months following the date of the initial waste determination; and

b. Perform a new waste determination whenever changes to the source generating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level that is equal to or greater than the applicable VO concentration limits specified in Section 3 of this administrative regulation.

2. When the hazardous waste enters the facility in a container, the owner or operator shall perform a waste determination for the material held in each container.

(d) For the case when the average VO concentration of the hazardous waste is determined by the owner or operator to be less than 100 ppmw, but because of normal operating variations in the

source or process generating the hazardous waste the VO concentration of the hazardous waste may be equal to or greater than 100 ppmw at any given time during the averaging period, the owner or operator shall prepare and enter in the facility operating record information that specifies the following:

1. The maximum and minimum VO concentration values for the hazardous waste that occur during that averaging period used for the waste determination;

2. The operating conditions or circumstances under which the VO concentration of the hazardous waste shall be equal to or greater than 100 ppmw, and;

3. The information and calculations used by the owner or operator to determine the average VO concentration of the hazardous waste.

(e) Procedure for using direct measurement to determine average VO concentration of a hazardous waste at the point of waste origination.

1. The owner or operator shall identify and record the point of waste origination for the hazardous waste. All waste samples used to determine the average VO concentration of the hazardous waste shall be collected at this point.

2. The owner or operator shall designate and record the averaging period to be used for determining the average VO concentration for the hazardous waste. The averaging period shall not exceed one (1) year. An initial waste determination shall be performed for each averaging period.

3. The owner or operator shall identify each discrete quantity of the material composing the hazardous waste represented by the averaging period designated in subparagraph 2 of this paragraph. An example of a discrete quantity of material composing a hazardous waste generated as part of a continuous process is the quantity of material generated during a process operating mode defined by a specific set of operating conditions that are normal for the process. An example of a discrete quantity of material composing a hazardous waste generated as part of a batch process that is performed repeatedly but not necessarily continuously is the total quantity of material composing a single batch generated by the process. An example of a discrete quantity of material composing a hazardous waste delivered to a facility in a container is the total quantity of material held in the container.

4. The following procedure shall be used measure the VO concentration for each discrete quantity of material identified in subparagraph 3 of this paragraph:

a. A sufficient number of samples, but no less than four (4) samples, shall be collected to represent the organic composition for the entire discrete quantity of hazardous waste being tested. All of the samples shall be collected within a one (1) hour period. Sufficient information shall be prepared and recorded to document the waste quantity represented by the samples and, as applicable, the operating conditions for the source or process generating the hazardous waste represented by the samples.

b. Each sample shall be collected in accordance with the requirements specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW-846, Third Edition, (incorporated in 40 CFR 260.11, which is adopted in Section 3 of 401 KAR 30:010).

c. Each collected sample shall be prepared and analyzed in accordance with the requirements of Method 25D in 40 CFR Part 60, Appendix A.

d. The measured VO concentration for the discrete quantity of hazardous waste shall be determined by using the results for all samples analyzed in accordance with subparagraph 4c of this paragraph and the following equation:

$$C = \frac{1}{n} \times \sum_{i=1}^n C_i$$

where:

C
=Measured VO concentration of the discrete quantity of hazardous waste, ppmw.

i
=Individual sample "i" of the hazardous waste collected in accordance with the requirements of SW-846.

n
=Total number of samples of hazardous waste collected (at least four (4)) within a one (1) hour period.

C_i
=VO concentration measured by Method 25D for sample "i", ppmw.

5. The average VO concentration of the hazardous waste shall be determined using the following procedure:

a. When the facility owner or operator is the generator of the hazardous waste, a sufficient number of VO concentration measurements for the hazardous waste shall be performed in accordance with the requirements of subparagraph 4 of this paragraph to represent the complete range of hazardous waste organic compositions and quantities that occur during the entire averaging period due to normal variations in the operating conditions for each process operating mode identified for the source or process generating the hazardous waste.

b. When the facility owner or operator is not the generator of the hazardous waste, a sufficient number of VO concentration measurements for the hazardous waste shall be performed in accordance with the requirements of subparagraph 4 of this paragraph to represent the complete range of hazardous waste organic compositions and quantities that occur in the hazardous waste as received at the facility during the entire averaging period.

c. The average VO concentration of the hazardous waste at the point of waste origination shall be calculated by using the results for all VO measurements performed in accordance with subparagraph 4 of this paragraph and the following equation:

$$C_{ave} = \frac{1}{Q_T} \times \sum_{j=1}^m (Q_j \times C_j)$$

where:

C_{ave}
=Average VO concentration of the hazardous waste at the point of waste origination, ppmw.

j
=Individual discrete quantity "j" of the hazardous waste for which a VO concentration measurement is determined in accordance with the requirements of subparagraph 4 of this paragraph.

m
=Total number of VO concentration measurements determined in accordance with the requirements of subparagraph 4 of this paragraph for the averaging period.

Q_j
=Mass of the discrete quantity of the hazardous waste represented by C_j , kg.

Q_T
=Total mass of the hazardous waste for the averaging period, kg.

C_j
=Measured VO concentration of discrete quantity "j" for the hazardous waste determined in accordance with the requirements of subparagraph 4 of this paragraph, ppmw.

(f) Procedure for using knowledge of the waste to determine the

average VO concentration of a hazardous waste at the point of waste origination.

1. The owner or operator shall identify and record the point of waste origination for the hazardous waste. All information used to determine the average VO concentration of the hazardous waste shall be based on the hazardous waste composition at this point.

2. The owner or operator shall designate and record the averaging period to be used for determining the average VO concentration for the hazardous waste. The averaging period shall not exceed one (1) year. An initial waste determination shall be performed for each averaging period.

3. The owner or operator shall prepare and record sufficient information that documents the average VO concentration for the hazardous waste. Information may be used that is prepared by either the facility owner or operator or by the generator of the hazardous waste. Examples of information that may be used as the basis for knowledge of the waste include: organic material balances for the source or process generating the waste; VO concentration measurements for the same type of waste performed in accordance with the procedure specified in subsection (1)(e)4 of this section; previous individual organic constituent test data for the waste that are still applicable to the current waste management practices; documentation that the waste is generated by a process for which no organics-containing materials are used; previous test data for other locations managing the same type of waste; or other knowledge based on manifests, shipping papers, or waste certification notices.

4. If test data other than VO concentration measurements performed in accordance with the procedure specified in subsection (1)(e)4 of this section are used as the basis for knowledge of the waste, then the owner or operator shall document the test method, sampling protocol, and the means by which sampling variability and analytical variability are accounted for in the determination of the average VO concentration. For example, an owner or operator may use individual organic constituent concentration test data that are validated in accordance with Method 301 in Appendix A of 40 CFR Part 63 as the basis for knowledge of the waste.

(2) Waste determination procedures for treated hazardous waste.

(a) An owner or operator shall perform the applicable waste determination for each treated hazardous waste placed in a hazardous waste management unit exempted under the provisions of Section 3(3)(b) of this administrative regulation from using air emission controls in accordance with standards specified in Sections 5 through 8 of this administrative regulation, as applicable to the hazardous waste management unit.

(b) The owner or operator shall perform a waste determination for each discrete quantity of treated hazardous waste as follows:

1. When the hazardous waste is treated by a continuous process, the owner or operator shall:

a. Perform an initial waste determination for the treated waste stream before the first time any portion of the material in the waste stream is placed in a hazardous waste management unit subject to this administrative regulation, and thereafter update the information used for the waste determination at least once every twelve (12) months following the date of the initial waste determination; and

b. Perform a new waste determination whenever changes to the hazardous waste streams fed to the process are reasonably likely to cause the characteristics of the hazardous waste at the point of waste treatment to change to levels that fail to achieve the applicable conditions specified in Section 3(3)(b) of this administrative regulation.

2. When the hazardous waste is treated by a batch process that is performed repeatedly but not necessarily continuously, the owner or operator shall:

a. Perform an initial waste determination for the treated hazardous waste in one (1) or more representative batches treated by the process, and thereafter update the information used for the waste determination at least once every twelve (12) months following the date of the initial waste determination; and

b. Perform a new waste determination whenever changes to the hazardous waste treated by the process are reasonably likely to cause the characteristics of the hazardous waste at the point of waste treatment to change to levels that fail to achieve the applicable conditions specified in Section 3(3)(b) of this administrative regulation.

(c) The owner or operator shall designate and record the specific provision in Section 3(3)(b) of this administrative regulation for which the waste determination is being performed. The waste determination for the treated hazardous waste shall be performed using the applicable procedures specified in paragraphs (d) through (j) of this subsection.

(d) Procedure to determine the average VO concentration of a hazardous waste at the point of waste treatment.

1. The owner or operator shall identify and record the point of waste treatment for the hazardous waste. All waste samples used to determine the average VO concentration of the hazardous waste shall be collected at this point.

2. The owner or operator shall designate and record the averaging period to be used for determining the average VO concentration for the hazardous waste. The averaging period shall not exceed one (1) year. An initial waste determination shall be performed for each averaging period.

3. The owner or operator shall identify each discrete quantity of the material composing the hazardous waste represented by the averaging period designated in subparagraph 2 of this paragraph.

4. The following procedure shall be used measure the VO concentration for each discrete quantity of material identified in paragraph 3 of this subsection:

a. A sufficient number of samples, but no less than four (4) samples, shall be collected to represent the organic composition for the entire discrete quantity of hazardous waste being tested. All of the samples shall be collected within a one (1) hour period. Sufficient information shall be prepared and recorded to document the waste quantity represented by the samples and, as applicable, the operating conditions for the process treating the hazardous waste represented by the samples.

b. Each sample shall be collected in accordance with the requirements specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW-846, Third Edition, (incorporated in 40 CFR 260.11, which is adopted in Section 3 of 401 KAR 30:010).

c. Each collected sample shall be prepared and analyzed in accordance with the requirements of Method 25D in 40 CFR Part 60, Appendix A.

d. The measured VO concentration for the discrete quantity of hazardous waste shall be determined by using the results for all samples analyzed in accordance with subparagraph 4c of this paragraph and the following equation:

$$C = \frac{1}{n} \times \sum_{i=1}^n C_i$$

where:

C
=Measured VO concentration of the discrete quantity of hazardous waste, ppmw.

i
=Individual sample "i" of the hazardous waste collected in accordance with the requirements of SW-846.

n
=Total number of samples of hazardous waste collected (at least four (4)) within a one (1) hour period.

C_i
=VO concentration measured by Method 25D for sample "i", ppmw.

5. The average VO concentration of the hazardous waste at the point of waste treatment shall be determined using the following procedure:

a. When the facility owner or operator is the generator of the hazardous waste, a sufficient number of VO concentration measurements for the hazardous waste shall be performed in accordance with the requirements of subparagraph 4 of this paragraph to represent the complete range of hazardous waste organic compositions and quantities treated by the process during the entire averaging period.

b. The average VO concentration of the hazardous waste at the point of waste treatment shall be calculated by using the results for all VO measurements performed in accordance with subparagraph 4 of this paragraph and the following equation:

$$C_{avg} = \frac{1}{Q_T} \times \sum_{j=1}^m (Q_j \times C_j)$$

where:

C_{avg}
=Average VO concentration of the hazardous waste at the point of waste origination, ppmw.

j
=Individual discrete quantity "j" of the hazardous waste for which a VO concentration measurement is determined in accordance with the requirements of subparagraph 4 of this paragraph.

m
=Total number of VO concentration measurements determined in accordance with the requirements of subparagraph 4 of this paragraph for the averaging period.

Q_j
=Mass of the discrete quantity of the hazardous waste represented by C_j , kg.

Q_T
=Total mass of the hazardous waste for the averaging period, kg.

C_j
=Measured VO concentration of discrete quantity "j" for the hazardous waste determined in accordance with the requirements of subparagraph 4 of this paragraph, ppmw.

(e) Procedure to determine the exit concentration limit (C_i) for a treated hazardous waste.

1. The point of waste origination for each hazardous waste treated by the process at the same time shall be identified.

2. If a single hazardous waste stream is identified in subparagraph 1 of this paragraph, then the exit concentration limit (C_i) shall be 100 ppmw.

3. If more than one (1) hazardous waste stream is identified in subparagraph 1 of this paragraph, then the VO concentration of each hazardous waste stream at the point of waste origination shall be determined in accordance with the requirements of subsection (1) of this section. The exit concentration limit (C_i) shall be calculated by using the results determined for each individual hazardous waste stream and the following equation:

$$C_i = \frac{\sum_{x=1}^m (Q_x \times C_x) + \sum_{y=1}^n (Q_y \times 100 \text{ ppmw})}{\sum_{x=1}^m Q_x + \sum_{y=1}^n Q_y}$$

where:

C_i

=Exit concentration limit for treated hazardous waste, ppmw.

x
=Individual hazardous waste stream "x" that has a VO concentration less than 100 ppmw at the point of waste origination as determined in accordance with the requirements of subsection (1) of this section.

y
=Individual hazardous waste stream "y" that has a VO concentration equal to or greater than 100 ppmw at the point of waste origination as determined in accordance with the requirements of subsection (1) of this section.

m
=Total number of "x" hazardous waste streams treated by process.

n
=Total number of "y" hazardous waste streams treated by process.

Q_x
=Annual mass quantity of hazardous waste stream "x", kg/yr.

Q_y
=Annual mass quantity of hazardous waste stream "y", kg/yr.

C_x
=Average VO concentration of hazardous waste stream "x" at the point of waste origination as determined in accordance with the requirements of subsection (1) of this section, ppmw.

(f) Procedure to determine the organic reduction efficiency (R) for a treated hazardous waste.

1. The organic reduction efficiency for a treatment process shall be determined based on results for a minimum of three (3) consecutive runs. The sampling time for each run shall be 1 hour.

2. The point of each hazardous waste stream entering the process and each hazardous waste stream exiting the process that is to be included in the calculation of the organic reduction efficiency for the process shall be identified.

3. For each run, the following information shall be determined for each hazardous waste stream identified in subparagraph 2 of this paragraph using the following procedures:

a. The mass quantity of each hazardous waste stream entering the process (Q_b) and the mass quantity of each hazardous waste stream exiting the process (Q_a) shall be determined.

b. The VO concentration of each hazardous waste stream entering the process (C_b) during the run shall be measured in accordance with the requirements of subsection (1)(e)4a through (1)(e)4d of this section. The VO concentration of each hazardous waste stream exiting the process (C_a) during the run shall be determined in accordance with the requirements of paragraph (d)4 of this subsection. Samples shall be collected as follows:

(i) For a continuous process, the samples of the hazardous waste entering and samples of the hazardous waste exiting the process shall be collected concurrently.

(ii) For a batch process, the samples of the hazardous waste entering the process shall be collected at the time that the hazardous waste is placed in the process. The samples of the hazardous waste exiting the process shall be collected as soon as practicable after the time when the process stops operation or the final treatment cycle ends.

4. The waste volatile organic mass flow entering the process (E_b) and the waste volatile organic mass flow exiting the process (E_a) shall be calculated by using the results determined in accordance with subparagraph 3 of this paragraph and the following equations:

$$E_b = \frac{1}{10^6} \sum_{j=1}^m (Q_{bj} \times C_{bj})$$

$$E_a = \frac{1}{10^6} \sum_{j=1}^m (Q_{aj} \times C_{aj})$$

where:

$$E_a$$

=Waste volatile organic mass flow exiting process, kg/hr.

$$E_b$$

=Waste volatile organic mass flow entering process, kg/hr.

$$m$$

=Total number of runs (at least three (3))

$$j$$

=Individual run "j"

$$Q_{aj}$$

=Mass quantity of hazardous waste entering process during run "j", kg/hr.

$$Q_{aj}$$

=Average mass quantity of waste exiting process during run "j", kg/hr.

$$C_{aj}$$

=Measured VO concentration of hazardous waste exiting process during run "j" as determined in accordance with the requirements of paragraph (d)4 of this subsection, ppmw.

$$C_{bj}$$

=Measured VO concentration of hazardous waste entering process during run "j" as determined in accordance with the requirements of subsections (1)(e)4a through (1)(e)4d of this section, ppmw.

5. The organic reduction efficiency of the process shall be calculated by using the results determined in accordance with subparagraph 4 of this paragraph and the following equation:

$$R = \frac{E_b - E_a}{E_b} \times 100\%$$

where:

$$R$$

=Organic reduction efficiency, percent.

$$E_b$$

=Waste volatile organic mass flow entering process as determined in accordance with the requirements of subparagraph 4 of this paragraph, kg/hr.

$$E_a$$

=Waste volatile organic mass flow exiting process as determined in accordance with the requirements of subparagraph 4 of this paragraph, kg/hr.

(g) Procedure to determine the organic biodegradation efficiency (R_{bio}) for a treated hazardous waste.

1. The fraction of organics biodegraded (F_{bio}) shall be determined using the procedure specified in 40 CFR Part 63, Appendix C.

2. The organic biodegradation efficiency shall be calculated by using the following equation:

$$R_{bio} = F_{bio} \times 100\%$$

where

$$R_{bio}$$

=Organic biodegradation efficiency, percent.

$$F_{bio}$$

=Fraction of organic biodegraded as determined in accordance with the requirements of subparagraph 1 of this paragraph.

(h) Procedure to determine the required organic mass removal rate (RMR) for a treated hazardous waste.

1. The point of waste origination for each hazardous waste treated by the process at the same time shall be identified.

2. For each hazardous waste stream identified in subparagraph 1 of this paragraph, the VO concentration of the hazardous waste stream at the point of waste origination shall be determined in accordance with the requirements of subsection (1) of this section.

3. For each individual hazardous waste stream that has a volatile organic concentration equal to or greater than 100 ppmw at the point of waste origination as determined in accordance with the requirements of subparagraph 2 of this paragraph, the average volumetric flow rate of hazardous waste at the point of waste origination and the density of the hazardous waste stream shall be determined.

4. The required organic mass removal rate for the hazardous waste shall be calculated by using the results determined for each individual hazardous waste stream in accordance with the requirements of subparagraphs 2 and 3 of this paragraph and the following equation:

$$RMR = \sum_{y=1}^n \left[V_y \times k_y \times \frac{(\bar{C}_y - 100 \text{ ppmw})}{10^6} \right]$$

where:

$$RMR$$

=Required organic mass removal rate, kg/hr.

$$y$$

=Individual hazardous waste stream "y" that has a volatile organic concentration equal to or greater than 100 ppmw at the point of waste origination as determined in accordance with the requirements of subsection (1) of this section.

$$n$$

=Total number of "y" hazardous waste streams treated by process.

$$V_y$$

=Average volumetric flow rate of hazardous waste stream "y" at the point of waste origination, m³/hr.

$$k_y$$

=Density of hazardous waste stream "y", kg/m³

$$\bar{C}_y$$

=Average VO concentration of hazardous waste stream "y" at the point of waste origination as determined in accordance with the requirements of subsection (1) of this section, ppmw.

(i) Procedure to determine the actual organic mass removal rate (MR) for a treated hazardous waste.

1. The actual organic mass removal rate shall be determined based on results for a minimum of three (3) consecutive runs. The sampling time for each run shall be one (1) hour.

2. The waste volatile organic mass flow entering the process (E_b) and the waste volatile organic mass flow exiting the process (E_a) shall be determined in accordance with the requirements of paragraph (f)4 of this subsection.

3. The actual organic mass removal rate shall be calculated by using the results determined in accordance with the requirements of subparagraph 2 of this paragraph and the following equation:

$$MR = E_b - E_a$$

where:

$$MR$$

=Actual organic mass removal rate, kg/hr.

$$E_b$$

=Waste volatile organic mass flow entering process as determined in accordance with the requirements of paragraph (f)4 of this subsection, kg/hr.

$$E_g$$

=Waste volatile organic mass flow exiting process as determined in accordance with the requirements of paragraph (f)4 of this subsection, kg/hr.

(j) Procedure to determine the actual organic mass biodegradation rate (MR_{bio}) for a treated hazardous waste.

1. The actual organic mass biodegradation rate shall be determined based on results for a minimum of three consecutive runs. The sampling time for each run shall be one (1) hour.

2. The waste organic mass flow entering the process (E_b) shall be determined in accordance with the requirements of paragraph (f)4 of this subsection.

3. The fraction of organic biodegraded (F_{bio}) shall be determined using the procedure specified in 40 CFR Part 63, Appendix C.

4. The actual organic mass biodegradation rate shall be calculated by using the mass flow rates and fraction of organic biodegraded determined in accordance with the requirements of subparagraphs 2 and 3 of this paragraph and the following equation:

$$MR_{bio} = E_b \times F_{bio}$$

where:

$$MR_{bio}$$

=Actual organic mass biodegradation rate, kg/hr.

$$E_b$$

=Waste organic mass flow entering process as determined in accordance with the requirements of paragraph (f)4 of this subsection, kg/hr.

$$F_{bio}$$

=Fraction of organic biodegraded as determined in accordance with the requirements of subparagraph 3 of this paragraph.

(3) Procedure to determine the maximum organic vapor pressure of a hazardous waste in a tank.

(a) An owner or operator shall determine the maximum organic vapor pressure for each hazardous waste placed in a tank using air emission controls in accordance with standards specified in Section 5(3) of this administrative regulation.

(b) An owner or operator shall use either direct measurement as specified in paragraph (c) of this subsection or knowledge of the waste as specified by paragraph (d) of this subsection to determine the maximum organic vapor pressure that is representative of the hazardous waste composition stored or treated in the tank.

(c) To determine the maximum organic vapor pressure of the hazardous waste by direct measurement, the following procedure shall be used:

1. Representative samples of the waste contained in the tank shall be collected. Sampling shall be conducted in accordance with the requirements specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW-846, Third Edition, (incorporated in 40 CFR 260.11, which is adopted in Section 3 of 401 KAR 30:010).

2. Any appropriate one of the following methods may be used to analyze the samples and compute the maximum organic vapor pressure:

a. Method 25E in 40 CFR Part 60, Appendix A;

b. Methods described in American Petroleum Institute Publication 2517, Third Edition, February 1989, "Evaporative Loss from External Floating-Roof Tanks," (incorporated in 40 CFR 260.11, which is adopted in Section 3 of 401 KAR 30:010);

c. Methods obtained from standard reference texts;

d. ASTM Method 2879-92 (incorporated in 40 CFR 260.11, which is adopted in Section 3 of 401 KAR 30:010); or

e. Any other method approved by the cabinet.

(d) To determine the maximum organic vapor pressure of the hazardous waste by knowledge, sufficient information shall be prepared and recorded that documents the maximum organic vapor pressure of the hazardous waste in the tank. Examples of information that may be used include: documentation that the waste is generated by a process for which no organics-containing materials are used; or that the waste is generated by a process for which at other locations it previously has been determined by direct measurement that the waste maximum organic vapor pressure is less than the maximum vapor pressure limit for the appropriate design capacity category specified for the tank.

Section 5. Standards: Tanks. (1) This section applies to owners and operators of tanks subject to this administrative regulation into which any hazardous waste is placed except for the following tanks:

(a) A tank in which all hazardous waste entering the tank meets the conditions specified in Section 3(3) of this administrative regulation; or

(b) A tank used for biological treatment of hazardous waste in accordance with the requirements of Section 3(3)(b)4 of this administrative regulation.

(2) The owner or operator shall place the hazardous waste into one (1) of the following tanks:

(a) A tank equipped with a cover (for example, a fixed roof) that is vented through a closed-vent system to a control device in accordance with the requirements specified in subsection (4) of this section;

(b) A tank equipped with a fixed roof and internal floating roof in accordance with the requirements of Section 11 of this administrative regulation;

(c) A tank equipped with an external floating roof in accordance with the requirements of Section 11 of this administrative regulation; or

(d) A pressure tank that is designed to operate as a closed system such that the tank operates with no detectable organic emissions at all times that hazardous waste is in the tank except as provided for in subsection (7) of this section.

(3) As an alternative to complying with subsection (2) of this section, an owner or operator may place hazardous waste in a tank equipped with a cover (for example, a fixed roof) meeting the requirements specified in subsection (4)(a) of this section when the hazardous waste is determined to meet all of the following conditions:

(a) The hazardous waste is neither mixed, stirred, agitated, nor circulated within the tank by the owner or operator using a process that results in splashing, frothing, or visible turbulent flow on the waste surface during normal process operations;

(b) The hazardous waste in the tank is not heated by the owner or operator except during conditions requiring that the waste be heated to prevent the waste from freezing or to maintain adequate waste flow conditions for continuing normal process operations;

(c) The hazardous waste in the tank is not treated by the owner or operator using a waste stabilization process or a process that produces an exothermic reaction; and

(d) The maximum organic vapor pressure of the hazardous waste in the tank as determined using the procedure specified in Section 4(3) of this administrative regulation is less than the following applicable value:

1. If the tank design capacity is equal to or greater than 151 m³ (39,893 gallons), then the maximum organic vapor pressure shall be less than 5.2 kPa (gauge);

2. If the tank design capacity is equal to or greater than 75 m³ (19,814 gallons) but less than 151 m³ (39,893 gallons), then the maximum organic vapor pressure shall be less than 27.6 kPa (gauge); or

3. If the tank design capacity is less than 75 m³ (19,814 gallons), then the maximum organic vapor pressure shall be less than 76.6 kPa (gauge).

(4) To comply with subsection (2)(a) of this section, the owner or operator shall design, install, operate, and maintain a cover that vents the organic vapors emitted from hazardous waste in the tank through a closed-vent system connected to a control device.

(a) The cover shall be designed and operated to meet the following requirements:

1. The cover and all cover openings (for example, access hatches, sampling ports, and gauge wells) shall be designed to operate with no detectable organic emissions when all cover openings are secured in a closed, sealed position.

2. Each cover opening shall be secured in a closed, sealed position (for example, covered by a gasketed lid or cap) at all times that hazardous waste is in the tank except as provided for in subsection (6) of this section.

(b) The closed-vent system and control device shall be designed and operated in accordance with the requirements of Section 8 of this administrative regulation.

(5) The owner and operator shall install, operate, and maintain enclosed pipes or other closed systems for the transfer of hazardous waste as described in paragraph (a) or (b) of this subsection. The cabinet considers a drain system that meets the requirements of 40 CFR 61.346(a)(1) or 40 CFR 61.346(b)(1) through (b)(3) to be a closed system.

(a) Transfer all hazardous waste to the tank from another tank, surface impoundment, or container subject to this administrative regulation except for those hazardous wastes that meet the conditions specified in Section 3(3) of this administrative regulation; and

(b) Transfer all hazardous waste from the tank to another tank, surface impoundment, or container subject to this administrative regulation except for those hazardous wastes that meet the conditions specified in Section 3(3) of this administrative regulation.

(6) Each cover opening shall be secured in a closed, sealed position (for example, covered by a gasketed lid) at all times that hazardous waste is in the tank except when it is necessary to use the cover opening to:

(a) Add, remove, inspect, or sample the material in the tank;

(b) Inspect, maintain, repair, or replace equipment located inside the tank; or

(c) Vent gases or vapors from the tank to a closed-vent system connected to a control device that is designed and operated in accordance with the requirements of Section 8 of this administrative regulation.

(7) One (1) or more safety devices that vent directly to the atmosphere may be used on the tank, cover, closed-vent system, or control device provided each safety device meets all of the following conditions:

(a) The safety device is not used for planned or routine venting of organic vapors from the tank or the closed-vent system connected to a control device; and

(b) The safety device remains in a closed, sealed position at all times except when an unplanned event requires that the device open for the purpose of preventing physical damage or permanent deformation of the tank, cover, closed-vent system, or control device in accordance with good engineering and safety practices for handling flammable, combustible, explosive, or other hazardous materials. An example of an unplanned event is a sudden power outage.

Section 6. Standards: Surface Impoundments. (1) This section applies to owners and operators of surface impoundments subject to this administrative regulation into which any hazardous waste is placed except for the following surface impoundments:

(a) A surface impoundment in which all hazardous waste entering the surface impoundment meets the conditions specified in Section 3(3) of this administrative regulation; or

(b) A surface impoundment used for biological treatment of hazardous waste in accordance with the requirements of Section 3(3)(b)4 of this administrative regulation.

(2) The owner or operator shall place the hazardous waste into a surface impoundment equipped with a cover (for example, an air-supported structure or a rigid cover) that is vented through a closed-vent system to a control device meeting the requirements specified in subsection (4) of this section.

(3) As an alternative to complying with subsection (2) of this section, an owner or operator may place hazardous waste in a surface impoundment equipped with a floating membrane cover meeting the requirements specified in subsection (5) of this section when the hazardous waste is determined to meet all of the following conditions:

(a) The hazardous waste is neither mixed, stirred, agitated, nor circulated within the surface impoundment by the owner or operator using a process that results in splashing, frothing, or visible turbulent flow on the waste surface during normal process operations;

(b) The hazardous waste in the surface impoundment is not heated by the owner or operator; and

(c) The hazardous waste in the surface impoundment is not treated by the owner or operator using a waste stabilization process or a process that produces an exothermic reaction.

(4) To comply with subsection (2) of this section, the owner or operator shall design, install, operate, and maintain a cover that vents the organic vapors emitted from hazardous waste in the surface impoundment through a closed-vent system connected to a control device.

(a) The cover shall be designed, installed, operated, and maintained to meet the following requirements:

1. The cover and all cover openings (for example, access hatches, sampling ports, and gauge wells) shall be designed to operate with no detectable organic emissions when all cover openings are secured in a closed, sealed position.

2. Each cover opening shall be secured in the closed, sealed position (for example, covered by a gasketed lid or cap) at all times that hazardous waste is in the surface impoundment except as provided for in subsection (7) of this section.

3. The closed-vent system and control device shall be designed and operated in accordance with Section 8 of this administrative regulation.

(5) To comply with subsection (3) of this section, the owner or operator shall design, install, operate, and maintain a floating membrane cover that meets all of the following requirements:

(a) The floating membrane cover shall be designed, installed, and operated such that at all times when hazardous waste is in the surface impoundment, the entire surface area of the hazardous waste is enclosed by the cover, and any air spaces underneath the cover are not vented to the atmosphere except during conditions specified in subsection (8) of this section.

(b) The floating membrane cover and all cover openings (for example, access hatches, sampling ports, and gauge wells) shall be designed to operate with no detectable organic emissions when all cover openings are secured in a closed, sealed position.

(c) Each cover opening shall be secured in a closed, sealed position (for example, covered by a gasketed lid or cap) at all times that hazardous waste is in the surface impoundment except as provided for in subsections (7)(a) through (7)(c) of this section; and

(d) The synthetic membrane material used for the floating membrane cover shall be either:

1. High density polyethylene with a thickness no less than 2.5 mm; or

2. A material or a composite of different materials determined to have the following properties:

a. Organic permeability properties that are equivalent to those of the material specified in subparagraph 1 of this paragraph; and

b. Chemical and physical properties that maintain the material

integrity for as long as the cover is in use. Factors that shall be considered in selecting the material include: the effects of contact with the waste managed in the impoundment, weather exposure, and cover installation and operation practices.

(6) The owner or operator shall install, operate, and maintain enclosed pipes or other closed systems for the transfer of hazardous waste as described in paragraph (a) or (b) of this subsection. The cabinet considers a drain system that meets the requirements of 40 CFR 61.346(a)(1) or 40 CFR 61.346(b)(1) through (b)(3) to be a closed system. The owner or operator shall:

(a) Transfer all hazardous waste to the surface impoundment from another tank, surface impoundment, or container subject to this administrative regulation except for those hazardous wastes that meet the conditions specified in Section 3(3) of this administrative regulation; and

(b) Transfer all hazardous waste from the surface impoundment to another tank, surface impoundment, or container subject to this administrative regulation except for those hazardous wastes that meet the conditions specified in Section 3(3) of this administrative regulation.

(7) Each cover opening shall be secured in the closed, sealed position (for example, covered by a gasketed lid or cap) at all times that hazardous waste is in the surface impoundment except when it is necessary to use the cover opening to:

(a) Add, remove, inspect, or sample the material in the surface impoundment;

(b) Inspect, maintain, repair, or replace equipment located underneath the cover;

(c) Remove treatment residues from the surface impoundment in accordance with the requirements of Section 4 of 401 KAR 37:010; or

(d) Vent gases or vapors from the surface impoundment to a closed-vent system connected to a control device that is designed and operated in accordance with the requirements of Section 8 of this administrative regulation.

(8) One (1) or more safety devices that vent directly to the atmosphere may be installed on the cover, closed-vent system, or control device provided each device meets all of the following conditions:

(a) The safety device is not used for planned or routine venting of organic vapors from the surface impoundment or the closed-vent system connected to a control device; and

(b) The safety device remains in a closed, sealed position at all times except when an unplanned event requires that the device open for the purpose of preventing physical damage or permanent deformation of the cover, closed-vent system, or control device in accordance with good engineering and safety practices for handling flammable, combustible, explosive, or other hazardous materials. An example of an unplanned event is a sudden power outage.

Section 7. Standards: Containers. (1) This section applies to the owners and operators of containers having design capacities greater than 0.1 m³ (26.4 gallons) subject to this administrative regulation into which any hazardous waste is placed except for a container in which all hazardous waste entering the container meets the conditions specified in Section 3(3) of this administrative regulation.

(2) An owner or operator shall manage hazardous waste in containers using the following procedures:

(a) The owner or operator shall place the hazardous waste into one (1) of the following containers except when a container is used for hazardous waste treatment as required by subsection (2)(b) of this section:

1. A container that is equipped with a cover that operates with no detectable organic emissions when all container openings (for example, lids, bungs, hatches, and sampling ports) are secured in a closed, sealed position. The owner or operator shall determine that a container operates with no detectable emissions by testing each

opening on the container for leaks in accordance with Method 21 in 40 CFR Part 60, Appendix A the first time any portion of the hazardous waste is placed into the container. If a leak is detected and cannot be repaired immediately, the hazardous waste shall be removed from the container and the container not used to meet the requirements of this paragraph until the leak is repaired and the container is retested.

2. A container having a design capacity less than or equal to 0.46 m³ (121.5 gallons) that is equipped with a cover and complies with all applicable Transportation Cabinet regulations on packaging hazardous waste for transport under 49 CFR Subpart C, incorporated by reference in 601 KAR 1:025.

a. A container that is managed in accordance with the requirements of 49 CFR Subpart C for the purpose of complying with this administrative regulation is not subject to any exceptions to the 49 CFR Subpart C regulations, except as noted in subparagraph 2b of this paragraph.

b. A lab pack that is managed in accordance with the requirements of 49 CFR Subpart C for the purpose of complying with this administrative regulation may comply with the exceptions for combination packagings specified in 49 CFR Subpart C, incorporated by reference in 601 KAR 1:025.

3. A container that is attached to or forms a part of any truck, trailer, or railcar; and that has been demonstrated within the preceding twelve (12) months to be organic vapor tight when all container openings are in a closed, sealed position (for example, the container hatches or lids are gasketed and latched). For the purpose of meeting the requirements of this paragraph, a container is organic vapor tight if the container sustains a pressure change of not more than 750 pascals (0.11 psi) within five (5) minutes after it is pressurized to a minimum of 4,500 pascals (0.65 psi). This condition is to be demonstrated using the pressure test specified in Method 27 of 40 CFR Part 60, Appendix A, and a pressure measurement device that has a precision of ± 2.5 mm water and that is capable of measuring above the pressure at which the container is to be tested for vapor tightness.

(b) An owner or operator treating hazardous waste in a container by either a waste stabilization process, any process that requires the addition of heat to the waste, or any process that produces an exothermic reaction shall meet the following requirements:

1. Whenever it is necessary for the container to be open during the treatment process, the container shall be located inside an enclosure that is vented through a closed-vent system to a control device.

2. The enclosure shall be a structure that is designed and operated in accordance with the following requirements:

a. The enclosure shall be a structure that is designed and operated with sufficient airflow into the structure to capture the organic vapors emitted from the hazardous waste in the container and vent the vapors through the closed-vent system to the control device.

b. The enclosure may have permanent or temporary openings to allow worker access; passage of containers through the enclosure by conveyor or other mechanical means; entry of permanent mechanical or electrical equipment; or to direct airflow into the enclosure. The pressure drop across each opening in the enclosure shall be maintained at a pressure below atmospheric pressure such that whenever an open container is placed inside the enclosure no organic vapors released from the container exit the enclosure through the opening. The owner or operator shall determine that an enclosure achieves this condition by measuring the pressure drop across each opening in the enclosure. If the pressure within the enclosure is equal to or greater than atmospheric pressure then the enclosure does not meet the requirements of this section.

3. The closed-vent system and control device shall be designed and operated in accordance with the requirements of Section 8 of this administrative regulation.

(c) An owner or operator transferring hazardous waste into a container having a design capacity greater than 0.46 m³ (121.5

gallons) shall meet the following requirements:

1. Hazardous waste transfer by pumping shall be performed using a conveyance system that uses a tube (for example, pipe, hose) to add the waste into the container. During transfer of the waste into the container, the cover shall remain in place and all container openings shall be maintained in a closed, sealed position except for those openings through which the tube enters the container and as provided for in subsection (3) of this section. The tube shall be positioned in a manner such that either the:

a. Tube outlet continuously remains submerged below the waste surface at all times waste is flowing through the tube;

b. Lower bottom edge of the tube outlet is located at a distance no greater than two (2) inside diameters of the tube or 15.25 cm (six (6) inches), whichever distance is greater, from the bottom of the container at all times waste is flowing through the tube; or

c. Tube is connected to a permanent port mounted on the bottom of the container so that the lower edge of the port opening inside the container is located at a distance equal to or less than 15.25 cm (six (6) inches) from the container bottom.

2. Hazardous waste transferred by a means other than pumping shall be performed such that during transfer of the waste into the container, the cover remains in place and all container openings are maintained in a closed, sealed position except for those openings through which the hazardous waste is added and as provided for in subsection (4) of this section.

(3) Each container opening shall be maintained in a closed, sealed position (for example, covered by a gasketed lid) at all times that hazardous waste is in the container except when it is necessary to use the opening to:

(a) Add, remove, inspect, or sample the material in the container;

(b) Inspect, maintain, repair, or replace equipment located inside the container; or

(c) Vent gases or vapors from a cover located over or enclosing an open container to a closed-vent system connected to a control device that is designed and operated in accordance with the requirements of Section 8 of this administrative regulation.

(4) One (1) or more safety devices that vent directly to the atmosphere may be used on the container, cover, enclosure, closed-vent system, or control device provided each device meets all of the following conditions:

(a) The safety device is not used for planned or routine venting of organic vapors from the container, cover, enclosure, or closed-vent system connected to a control device; and

(b) The safety device remains in a closed, sealed position at all times except when an unplanned event requires that the device open for the purpose of preventing physical damage or permanent deformation of the container, cover, enclosure, closed-vent system, or control device in accordance with good engineering and safety practices for handling flammable, combustible, explosive, or other hazardous materials. An example of an unplanned event is a sudden power outage.

Section 8. Standards: Closed-vent Systems and Control Devices.

(1) This section applies to each closed-vent system and control device installed and operated by the owner or operator to control air emissions in accordance with standards of this administrative regulation.

(2) The closed-vent system shall meet the following requirements:

(a) The closed-vent system shall route the gases, vapors, and fumes emitted from the hazardous waste in the hazardous waste management unit to a control device that meets the requirements specified in subsection (3) of this section.

(b) The closed-vent system shall be designed and operated in accordance with the requirements specified in Section 4(1) of 401 KAR 35:275.

(c) If the closed-vent system contains one (1) or more bypass devices that may be used to divert all or a portion of the gases,

vapors, or fumes from entering the control device, the owner or operator shall meet the following requirements:

1. For each bypass device except as provided for in subparagraph 2 of this paragraph, the owner or operator shall either:

a. Install, calibrate, maintain, and operate a flow indicator at the inlet to the bypass device that indicates at least once every fifteen (15) minutes whether gas, vapor, or fume flow is present in the bypass device; or

b. Secure the valve installed at the inlet to the bypass device in the closed position using a car-seal or a lock-and-key type configuration. The owner or operator shall visually inspect the seal or closure mechanism at least once every month to verify that the valve is maintained in the closed position.

2. Low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and safety devices are not subject to the requirements of subparagraph 1 of this paragraph.

(3) The control device shall meet the following requirements:

(a) The control device shall be one (1) of the following devices:

1. A control device designed and operated to reduce the total organic content of the inlet vapor stream vented to the control device by at least ninety-five (95) percent by weight;

2. An enclosed combustion device designed and operated in accordance with the requirements of Section 4(3) of 401 KAR 35:275; or

3. A flare designed and operated in accordance with the requirements of Section 4(4) of 401 KAR 35:275.

(b) The control device shall be operating at all times when gases, vapors, or fumes are vented from the hazardous waste management unit through the closed-vent system to the control device.

(c) The owner or operator using a carbon adsorption system to comply with paragraph (a) of this subsection shall operate and maintain the control device in accordance with the following requirements:

1. Following the initial start-up of the control device, all activated carbon in the control device shall be replaced with fresh carbon on a regular basis in accordance with the requirements of Section 4(7) or (8) or 401 KAR 35:275.

2. All carbon removed from the control device shall be managed in accordance with the requirements of Section 4(12) of 401 KAR 35:275.

(d) An owner or operator using a control device other than a thermal vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system to comply with paragraph (a) of this subsection shall operate and maintain the control device in accordance with the requirements of Section 4(9) of 401 KAR 35:275.

(e) The owner or operator shall demonstrate that a control device achieves the performance requirements of paragraph (a) of this subsection as follows:

1. An owner or operator shall demonstrate using either a performance test as specified in subparagraph 3 of this paragraph or a design analysis as specified in subparagraph 4 of this paragraph the performance of each control device except for the following:

a. A flare;

b. A boiler or process heater with a design heat input capacity of forty-four (44) megawatts or greater;

c. A boiler or process heater into which the vent stream is introduced with the primary fuel;

d. A boiler or process heater burning hazardous waste for which the owner or operator has been issued a final permit under 401 KAR Chapter 38 and designs and operates the unit in accordance with the requirements of 401 KAR 36:020, 36:025; or

e. A boiler or process heater burning hazardous waste for which the owner or operator has certified compliance with the interim status requirements of 401 KAR 36:020 and 36:025.

2. An owner or operator shall demonstrate the performance of each flare in accordance with the requirements specified in Section 4(5) of 401 KAR 35:275.

3. For a performance test conducted to meet the requirements of subparagraph 1 of this paragraph, the owner or operator shall use the test methods and procedures specified in Section 5(3)(a) through (d) of 401 KAR 35:275.

4. For a design analysis conducted to meet the requirements of subparagraph 1 of this paragraph, the design analysis shall meet the requirements specified in Section 6(2)(d)3 of 401 KAR 35:275.

5. The owner or operator shall demonstrate that a carbon adsorption system achieves the performance requirements of paragraph (a) of this subsection based on the total quantity of organics vented to the atmosphere from all carbon adsorption system equipment that is used for organic adsorption, organic desorption or carbon regeneration, organic recovery, and carbon disposal.

(f) If the owner or operator and the cabinet do not agree on a demonstration of control device performance using a design analysis then the disagreement shall be resolved using the results of a performance test performed by the owner or operator in accordance with the requirements of paragraph (e)3 of this subsection. The cabinet may choose to have an authorized representative observe the performance test.

Section 9. Inspection and Monitoring Requirements. (1) This section applies to an owner or operator using air emission controls in accordance with the requirements of Sections 5 through 8 of this administrative regulation.

(2) Each cover used in accordance with requirements of Sections 5 through 7 of this administrative regulation shall be visually inspected and monitored for detectable organic emissions by the owner or operator using the procedure specified in subsection (6) of this section except as follows:

(a) An owner or operator is exempted from performing the cover inspection and monitoring requirements specified in subsection (6) of this section for the following tank covers:

1. A tank internal floating roof that is inspected and monitored in accordance with the requirements of Section 11 of this administrative regulation; or

2. A tank external floating roof that is inspected and monitored in accordance with the requirements of Section 11 of this administrative regulation.

(b) If a tank is buried partially or entirely underground, an owner or operator is required to perform the cover inspection and monitoring requirements specified in subsection (6) of this section only for those portions of the tank cover and those connections to the tank cover or tank body (for example fill ports, access hatches, gauge wells, etc.) that extend to or above the ground surface and can be opened to the atmosphere.

(c) An owner or operator is exempted from performing the cover inspection and monitoring requirements specified in subsection (6) of this section for a container that meets all requirements specified in either Section 7(2)(a)2 or 3 of this administrative regulation.

(d) An owner or operator is exempted from performing the cover inspection and monitoring requirements specified in subsection (6) of this section for an enclosure used to control air emissions from containers in accordance with the requirements of Section 7(2)(b) of this administrative regulation.

(3) Each closed-vent system used in accordance with the requirements of Section 8 of this administrative regulation shall be inspected and monitored by the owner or operator in accordance with the procedure specified in Section 4(10) of 401 KAR 35:275.

(4) Each control device used in accordance with the requirements of Section 8 of this administrative regulation shall be inspected and monitored by the owner or operator in accordance with the procedure specified in Section 4(6) of 401 KAR 35:275.

(5) The owner or operator shall develop and implement a written plan and schedule to perform all inspection and monitoring requirements of this section. The owner or operator shall incorporate this plan and schedule into the facility inspection plan required under

Section 6 of 401 KAR 35:020.

(6) Inspection and monitoring of a cover in accordance with the requirements of subsection (2) of this section shall be performed as follows:

(a) The cover and all cover openings shall be initially visually inspected and monitored for detectable organic emissions on or before the date that the tank, surface impoundment, or container using the cover becomes subject to the provisions of this administrative regulation and at other times as requested by the cabinet.

(b) At least once every six (6) months following the initial visual inspection and monitoring for detectable organic emissions required under paragraph (a) of this subsection, the owner and operator shall visually inspect and monitor the cover and each cover opening except for following cover openings:

1. A cover opening that has continuously remained in a closed, sealed position for the entire period since the last time the cover opening was visually inspected and monitored for detectable emissions;

2. A cover opening that is designated as unsafe to inspect and monitor in accordance with paragraph (e) of this subsection;

3. A cover opening on a cover installed and placed in operation before the effective date of this administrative regulation, that is designated as difficult to inspect and monitor in accordance with paragraph (f) of this subsection.

(c) To visually inspect a cover, the owner or operator shall view the entire cover surface and each cover opening in a closed, sealed position for evidence of any defect that may affect the ability of the cover or cover opening to continue to operate with no detectable organic emissions. A visible hole, gap, tear, or split in the cover surface or a cover opening is defined as a leak that shall be repaired in accordance with paragraph (g) of this subsection.

(d) To monitor a cover for detectable organic emissions, the owner or operator shall use the following procedure:

1. Method 21 in 40 CFR Part 60, Appendix A to test each cover seal and cover connection for detectable organic emissions. Seals on floating membrane covers shall be monitored around the entire perimeter of the cover at locations spaced no greater than three (3) meters (9.8 feet) apart.

2. For all cover connections and seals except for the seals around a rotating shaft that passes through a cover opening, if the monitoring instrument indicates detectable organic emissions (that is, an instrument concentration reading greater than 500 ppmv plus the background level), then a leak is detected. Each detected leak shall be repaired in accordance with paragraph (g) of this subsection.

3. For the seals around a rotating shaft that passes through a cover opening, if the monitoring instrument indicates a concentration reading greater than 10,000 ppmv, then a leak is detected. Each detected leak shall be repaired in accordance with paragraph (g) of this subsection.

(e) An owner or operator may designate a cover as an unsafe to inspect and monitor cover if all of the following conditions are met:

1. The owner or operator determines that inspection or monitoring of the cover would expose a worker to dangerous, hazardous, or other unsafe conditions.

2. The owner or operator develops and implements a written plan and schedule to inspect the cover using the procedure specified in paragraph (c) of this subsection and monitor the cover using the procedure specified in paragraph (d) of this subsection as frequently as practicable during those times when a worker can safely access the cover.

(f) An owner or operator may designate a cover installed and placed in operation before the effective date of this administrative regulation, as a difficult to inspect and monitor cover if all of the following conditions are met:

1. The owner or operator determines that inspection or monitoring the cover requires elevating a worker to a height greater than two (2) meters (6.56 feet) above a support surface; and

2. The owner and operator develops and implements a written plan and schedule to inspect the cover using the procedure specified in paragraph (c) of this subsection, and to monitor the cover using the procedure specified in paragraph (d) of this subsection at least once per calendar year.

(g) When a leak is detected by either of the methods specified in paragraph (c) or (d) of this subsection, the owner or operator shall repair the leak in the following manner:

1. The owner or operator shall make a first attempt at repairing the leak no later than five (5) calendar days after the leak is detected. Repair of the leak shall be completed as soon as practicable, but no later than fifteen (15)

calendar days after the leak is detected. If repair of the leak cannot be completed within the fifteen (15) day period, except as provided in subparagraph 2 of this paragraph, then the owner or operator shall not add hazardous waste to the tank, surface impoundment, or container on which the cover is installed until the repair of the leak is completed.

2. Repair of a leak detected on a cover installed on a tank or surface impoundment may be delayed beyond fifteen (15) calendar days if the owner or operator determines that both of the following conditions occur:

a. Repair of the leak requires first emptying the contents of the tank or surface impoundment; and

b. Temporary removal of the tank or surface impoundment from service shall result in the unscheduled cessation of production from the process unit or operation of the hazardous waste management unit that is generating the hazardous waste managed in the tank or surface impoundment.

3. Repair of a leak determined by the owner or operator to meet the conditions specified in subparagraph 2 of this paragraph shall be performed at the next time the process, system, or hazardous waste management unit that is generating the hazardous waste managed in the tank or surface impoundment stops operation for any reason.

Section 10. Recordkeeping Requirements. (1) Each owner or operator of a facility subject to requirements in this administrative regulation shall record and maintain the following information as applicable:

(a) Documentation for each cover installed on a tank in accordance with the requirements of Section 5(2)(b) or (c) of this administrative regulation that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the applicable design specifications as listed in Section 11(3) of this administrative regulation.

(b) Documentation for each floating membrane cover installed on a surface impoundment in accordance with the requirements of Section 6(3) of this administrative regulation that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the specifications listed in Section 6(5) of this administrative regulation.

(c) Documentation for each enclosure used to control air emissions from containers in accordance with the requirements of Section 7(2)(b)1 of this administrative regulation that includes information prepared by the owner or operator or provided by the manufacturer or vendor describing the enclosure design, and certification by the owner or operator that the enclosure meets the specifications listed in Section 7(2)(b)2 of this administrative regulation.

(d) Documentation for each closed-vent system and control device installed in accordance with the requirements of Section 8 of this administrative regulation that includes:

1. Certification that is signed and dated by the owner or operator stating that the control device is designed to operate at the performance level documented by a design analysis as specified in

subparagraph 2 of this paragraph or by performance tests as specified in subparagraph 3 of this paragraph when the tank, surface impoundment, or container is or would be operating at capacity or the highest level reasonably expected to occur.

2. If a design analysis is used, the design documentation as specified in Section 6(2)(d) of 401 KAR 35:275. The documentation shall include information prepared by the owner or operator or provided by the control device manufacturer or vendor that describes the control device design in accordance with Section 6(2)(d)3 of 401 KAR 35:275 and certification by the owner or operator that the control equipment meets the applicable specifications.

3. If performance tests are used, the performance test plan as specified in Section 6(2)(d) of 401 KAR 35:275 and all test results.

4. Information as required by Section 6(3)(a) and (b) of 401 KAR 35:275.

(e) Records for all Method 27 tests performed by the owner or operator for each container used to meet the requirements of Section 7 of this administrative regulation.

(f) Records for all visual inspections conducted in accordance with the requirements of Section 9 of this administrative regulation.

(g) Records for all monitoring for detectable organic emissions conducted in accordance with the requirements of Section 9 of this administrative regulation.

(h) Records of the date of each attempt to repair a leak, repair methods applied, and the date of successful repair.

(i) Records for all continuous monitoring conducted in accordance with the requirements of Section 9 of this administrative regulation.

(j) Records of the management of carbon removed from a carbon adsorption system conducted in accordance with Section 8(3)(c)2 of this administrative regulation.

(k) Records for all inspections of each cover installed on a tank in accordance with the requirements of Section 5(2)(b) or (c) of this administrative regulation that includes information as listed in Section 11(3) of this administrative regulation.

(2) An owner or operator electing to use air emission controls for a tank in accordance with the conditions specified in Section 5(3) of this administrative regulation shall record the following information:

(a) Date and time each waste sample is collected for direct measurement of maximum organic vapor pressure in accordance with Section 4(3) of this administrative regulation.

(b) Results of each determination for the maximum organic vapor pressure of the waste in the tank performed in accordance with Section 4(3) of this administrative regulation.

(c) Records specifying the tank dimensions and design capacity.

(3) An owner or operator electing to use air emission controls for a tank in accordance with the requirements of Section 11 of this administrative regulation shall record the information required by Section 11(3) of this administrative regulation.

(4) An owner or operator electing not to use air emission controls for a particular tank, surface impoundment, or container subject to this administrative regulation in accordance with the conditions specified in Section 3(3) of this administrative regulation shall record the information used by the owner or operator for each waste determination (for example, test results, measurements, calculations, and other documentation) in the facility operating log. If analysis results for waste samples are used for the waste determination, then the owner or operator shall record the date, time, and location that each waste sample is collected in accordance with applicable requirements of Section 4 of this administrative regulation.

(5) An owner or operator electing to comply with requirements in accordance with Section 3(3)(b)4 or 5 of this administrative regulation shall record the identification number for the incinerator, boiler, or industrial furnace in which the hazardous waste is treated.

(6) An owner or operator designating a cover as unsafe to inspect and monitor pursuant to Section 9(6)(e) of this administrative regulation or difficult to inspect and monitor pursuant to Section 9(6)(f) of this administrative regulation shall record in a log that is kept in the

facility operating record the following information:

(a) A list of identification numbers for tanks with covers that are designated as unsafe to inspect and monitor in accordance with the requirements of Section 9(6)(e) of this administrative regulation, an explanation for each cover stating why the cover is unsafe to inspect and monitor, and the plan and schedule for inspecting and monitoring each cover.

(b) A list of identification numbers for tanks with covers that are designated as difficult to inspect and monitor in accordance with the requirements of Section 9(6)(f) of this administrative regulation, an explanation for each cover stating why the cover is difficult to inspect and monitor, and the plan and schedule for inspecting and monitoring each cover.

(7) All records required by subsection (1) through (6) of this section except as required in subsection (1)(a) through (d) of this section shall be maintained in the operating record for a minimum of three (3) years. All records required by subsection (1)(a) through (d) of this section shall be maintained in the operating record until the air emission control equipment is replaced or otherwise no longer in service.

(8) The owner or operator of a facility that is subject to this administrative regulation and to the control device standards in 40 CFR Part 60 Subpart VV, or 40 CFR Part 61 Subpart V, may elect to demonstrate compliance with the applicable sections of this administrative regulation by documentation either pursuant to this administrative regulation, or pursuant to the provisions of 40 CFR Part 60 Subpart VV or 40 CFR Part 61 Subpart V, to the extent that the documentation required by 40 CFR Parts 60 or 61 duplicates the documentation required by this section.

(9) For each tank or container not using air emission controls specified in Sections 5 through 8 of this administrative regulation in accordance with the conditions specified in Section 1(4) of this administrative regulation, the owner or operator shall record and maintain the following information:

(a) A list of the individual organic peroxide compounds manufactured at the facility that meet the conditions specified in Section 1(4)(a) of this administrative regulation.

(b) A description of how the hazardous waste containing the organic peroxide compounds identified in paragraph (a) of this subsection are managed at the facility in tanks and containers. This description shall include:

1. For the tanks used at the facility to manage this hazardous waste, sufficient information shall be provided to describe for each tank: a facility identification number for the tank; the purpose and placement of this tank in the management train of this hazardous waste; and the procedures used to ultimately dispose of the hazardous waste managed in the tanks.

2. For containers used at the facility to manage these hazardous wastes, sufficient information shall be provided to describe: a facility identification number for the container or group of containers; the purpose and placement of this container, or group of containers, in the management train of this hazardous waste; and the procedures used to ultimately dispose of the hazardous waste handled in the containers.

(c) An explanation of why managing the hazardous waste containing the organic peroxide compounds identified in subsection (9)(a) of this section in the tanks and containers as described in subsection (9)(b) of this section would create an undue safety hazard if the air emission controls, as required under Sections 5 through 8 of this administrative regulation, are installed and operated on these hazardous waste management units. The explanation shall include the following information:

1. For tanks used at the facility to manage these hazardous wastes, sufficient information shall be provided to explain: how use of the required air emission controls on the tanks would affect the tank design features and facility operating procedures currently used to prevent an undue safety hazard during the management of this

hazardous waste in the tanks; and why installation of safety devices on the required air emission controls, as allowed under Section 5(7) of this administrative regulation, will not address those situations in which evacuation of tanks equipped with these air emission controls is necessary and consistent with good engineering and safety practices for handling organic peroxides.

2. For containers used at the facility to manage these hazardous wastes, sufficient information shall be provided to explain: how use of the required air emission controls on the containers would affect the container design features and handling procedures currently used to prevent an undue safety hazard during the management of this hazardous waste in the containers; and why installation of safety devices on the required air emission controls, as allowed under Section 7(4) of this administrative regulation, will not address those situations in which evacuation of containers equipped with these air emission controls is necessary and consistent with good engineering and safety practices for handling organic peroxides.

Section 11. Alternative Tank Emissions Control Requirements. (1) This section applies to owners and operators of tanks electing to comply with Section 5(2)(b) or (c) of this administrative regulation.

(a) The owner or operator electing to comply with Section 5(2)(b) of this administrative regulation shall design, install, operate, and maintain a fixed roof and internal floating roof that meet the following requirements.

1. The fixed roof shall comply with the requirements of Section 5(4)(a) of this administrative regulation. The internal floating roof shall rest or float on the waste surface (but not necessarily in complete contact with it) inside a tank that has a fixed roof. The internal floating roof shall be floating on the waste surface at all times, except during initial fill and during those intervals when the tank is completely emptied or subsequently emptied and refilled. When the roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be accomplished as rapidly as possible.

2. Each internal floating roof shall be equipped with one (1) of the following closure devices between the wall of the tank and the edge of the internal floating roof:

- a. A foam- or liquid-filled seal mounted in contact with the waste (liquid-mounted seal). A liquid-mounted seal means a foam- or liquid-filled seal mounted in contact with the waste between the wall of the tank and the floating roof continuously around the circumference of the tank.

- b. Two (2) seals mounted one above the other so that each forms a continuous closure that completely covers the space between the wall of the tank and the edge of the internal floating roof. The lower seal may be vapor-mounted, but both shall be continuous.

- c. A mechanical shoe seal. A mechanical shoe seal is a metal sheet held vertically against the wall of the tank by springs or weighted levers and is connected by braces to the floating roof. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

3. Each opening in a noncontact internal floating roof except for automatic bleeder vents (vacuum breaker vents) and the rim space vents is to provide a projection below the waste surface.

4. Each opening in the internal floating roof except for leg sleeves, automatic bleeder vents, rim space vents, column wells, ladder wells, sample wells, and stub drains is to be equipped with a cover or lid that is to be maintained in a closed position at all times (that is, no visible gap) except when the device is in actual use. The cover or lid shall be equipped with a gasket. Covers on each access hatch and automatic gauge float well shall be bolted except when they are in use.

5. Automatic bleeder vents shall be equipped with a gasket and are to be closed at all times when the roof is floating except when the roof is being floated off or is being landed on the roof leg supports.

6. Rim space vents shall be equipped with a gasket and are to be set to open only when the internal floating roof is not floating or at the

manufacturer's recommended setting.

7. Each penetration of the internal floating roof for the purpose of sampling shall be a sample well. The sample well shall have a slit fabric cover that covers at least ninety (90) percent of the opening.

8. Each penetration of the internal floating roof that allows for passage of a column supporting the fixed roof shall have a flexible fabric sleeve seal or a gasketed sliding cover.

9. Each penetration of the internal floating roof that allows for passage of a ladder shall have a gasketed sliding cover.

(b) The owner or operator electing to comply with Section 5(2)(c) of this administrative regulation shall design, install, operate, and maintain an external floating roof that meets the following requirements:

1. Each external floating roof shall be equipped with a closure device between the wall of the tank and the roof edge. The closure device is to consist of two (2) seals, one (1) above the other. The lower seal is referred to as the primary seal, and the upper seal is referred to as the secondary seal.

a. The primary seal shall be either a mechanical shoe seal or a liquid-mounted seal. Except as provided in subsection (2)(a)4 of this section, the seal shall completely cover the annular space between the edge of the floating roof and tank wall.

b. The secondary seal shall completely cover the annular space between the external floating roof and the wall of the tank in a continuous fashion except as allowed in subsection (2)(a)4 of this section.

2. Except for automatic bleeder vents and rim space vents, each opening in a noncontact external floating roof shall provide a projection below the waste surface. Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof is to be equipped with a gasketed cover, seal, or lid that is to be maintained in a closed position at all times (that is, no visible gap) except when the device is in actual use. Automatic bleeder vents are to be closed at all times when the roof is floating except when the roof is being floated off or is being landed on the roof leg supports. Rim vents are to be set to open when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting. Automatic bleeder vents and rim space vents are to be gasketed. Each emergency roof drain is to be provided with a slotted membrane fabric cover that covers at least ninety (90) percent of the area of the opening.

3. The roof shall be floating on the waste at all times (that is, off the roof leg supports) except during initial fill until the roof is lifted off leg supports and when the tank is completely emptied and subsequently refilled. The process of filling, emptying, or refilling when the roof is resting on the leg supports shall be continuous and shall be accomplished as rapidly as possible.

(c) The owner or operator may elect to comply with Section 5(2)(b) or (c) of this administrative regulation using an alternative means of emission limitation that is permitted as an alternative means for the purpose of compliance with 40 CFR 60.112b.

(2) Monitoring and inspection of the control equipment described in subsection (1) of this section shall be conducted as follows:

(a) After installation, owners or operators of internal floating roofs shall:

1. Visually inspect the internal floating roof, the primary seal, and the secondary seal (if one (1) is in service), prior to filling the tank with waste. If there are holes, tears, or other openings in the primary seal, the secondary seal, or the seal fabric, or defects in the internal floating roof, or both, the owner or operator shall repair the items before filling the tank.

2. For tanks equipped with a liquid-mounted or mechanical shoe primary seal, visually inspect the internal floating roof and the primary seal or the secondary seal (if one is in service) through manholes and roof hatches on the fixed roof at least once every twelve (12) months after initial fill. If the internal floating roof is not resting on the surface of the waste inside the tank, or there is liquid accumulated on the

roof, or the seal is detached, or there are holes or tears in the seal fabric, the owner or operator shall repair the items or empty and remove the tank from service within forty-five (45) days. If a failure that is detected during inspections required in this paragraph cannot be repaired within forty-five (45) days and if the tank cannot be emptied within forty-five (45) days, a thirty (30) day extension may be requested from the cabinet. Such a request for an extension shall document that alternate capacity is unavailable and specify a schedule of actions the owner or operator shall take that shall assure that the control equipment shall be repaired or the tank shall be emptied as soon as possible.

3. For tanks equipped with a double-seal system as specified in subsection (1)(a)2b of this section:

a. Visually inspect the tank as specified in subparagraph 4 of this paragraph at least every five (5) years; or

b. Visually inspect the tank as specified in subparagraph 2 of this paragraph.

4. Visually inspect the internal floating roof, the primary seal, the secondary seal (if one (1) is in service), gaskets, slotted membranes, and sleeve seals (if any) each time the tank is emptied and degassed. If the internal floating roof has defects; the primary seal has holes, tears, or other openings in the seal or the seal fabric; or the secondary seal has holes, tears, or other openings in the seal or the seal fabric; or the gaskets no longer close off the waste surfaces from the atmosphere; or the slotted membrane has more than ten (10) percent open area, the owner or operator shall repair the items as necessary so that none of the conditions specified in this paragraph exist before refilling the tank with waste. In no event shall inspections conducted in accordance with this provision occur at intervals greater than ten (10) years in the case of tanks conducting the annual visual inspection as specified in subparagraph 2 of this paragraph, and at intervals no greater than five (5) years in the case of tanks specified in subparagraph 3 of this paragraph.

5. Notify the cabinet in writing at least thirty (30) days prior to the filling or refilling of each tank for which an inspection is required by subparagraph 1 through 4 of this paragraph to afford the cabinet the opportunity to have an observer present. If the inspection required by subparagraph 4 of this paragraph is not planned and the owner or operator may not have known about the inspection thirty (30) days in advance of refilling the tank, the owner or operator shall notify the cabinet at least seven (7) days prior to the refilling of the tank. Notification shall be made by telephone immediately followed by written documentation demonstrating why the inspection was unplanned. Alternatively, this notification, including the written documentation, may be made in writing and sent by express mail so that it is received by the cabinet at least seven (7) days prior to the refilling.

(b) After installation, the owner or operator of an external floating roof shall:

1. Determine the gap areas and maximum gap widths between the primary seal and the wall of the tank and between the secondary seal and the wall of the tank according to the following frequency:

a. Measurements of gaps between the tank wall and the primary seal (seal gaps) shall be performed during the hydrostatic testing of the tank or within sixty (60) days of the initial fill with waste and at least once every five (5) years thereafter.

b. Measurements of gaps between the tank wall and the secondary seal shall be performed within sixty (60) days of the initial fill with waste and at least once per year thereafter.

c. If any tank ceases to hold waste for a period of one (1) year or more, subsequent introduction of waste into the tank shall be considered an initial fill for the purposes of subparagraphs 1a and 1b of this section.

2. Determine the gap widths and areas in the primary and secondary seals individually by the following procedures:

a. Measure seal gaps, if any, at one (1) or more floating roof levels when the roof is floating off the roof leg supports.

b. Measure seal gaps around the entire circumference of the tank in each place where a 0.32-cm (0.31 inches) diameter uniform probe passes freely (without forcing or binding against the seal) between the seal and the wall of the tank and measure the circumferential distance of each such location.

c. Determine the total surface area of each gap described in subparagraph 2b of this paragraph by using probes of various widths to measure accurately the actual distance from the tank wall to the seal and multiplying each such width by its respective circumferential distance.

3. Add the gap surface area of each gap location for the primary seal and the secondary seal individually and divide the sum for each seal by the nominal diameter of the tank and compare each ratio to the respective standards in subparagraph 4 of this paragraph.

4. Make necessary repairs or empty the tank within forty-five (45) days of identification in any inspection for seals not meeting the following requirements:

a. The accumulated area of gaps between the tank wall and the mechanical shoe or liquid-mounted primary seal shall not exceed 212 cm² per meter (one (1) inch² per ft) of tank diameter, and the width of any portion of any gap shall not exceed 3.81 cm (one and one-half (1.5) inches).

(i) One (1) end of the mechanical shoe is to extend into the waste contained in the tank, and the other end is to extend a minimum vertical distance of sixty-one (61) cm above the waste surface.

(ii) There are to be no holes, tears, or other openings in the shoe, seal fabric, or seal envelope.

b. The secondary seal is to meet the following requirements:

(i) The secondary seal is to be installed above the primary seal so that it completely covers the space between the roof edge and the tank wall except as provided in subparagraph 2c of this paragraph.

(ii) The accumulated area of gaps between the tank wall and the secondary seal shall not exceed 21.2 cm² per meter (one (1) inch² per foot) of tank diameter, and the width of any portion of any gap shall not exceed 1.27 cm (0.5 inches).

(iii) There are to be no holes, tears, or other openings in the seal or seal fabric.

5. If a failure that is detected during inspections required in subparagraph 1 of this paragraph cannot be repaired within 45 days and if the tank cannot be emptied within forty-five (45) days, a thirty (30) day extension may be requested from the cabinet. Such extension request shall include a demonstration of the unavailability of alternate capacity and a specification of a schedule that shall assure that the control equipment shall be repaired or the tank shall be emptied as soon as possible.

6. Notify the cabinet thirty (30) days in advance of any gap measurements required by subparagraph 1 of this paragraph to afford the cabinet the opportunity to have a representative present.

7. Visually inspect the external floating roof, the primary seal, secondary seal, and fittings each time the vessel is emptied and degassed.

a. If the external floating roof has defects, the primary seal has holes, tears, or other openings in the seal or the seal fabric, or the secondary seal has holes, tears, or other openings in the seal or the seal fabric, the owner or operator shall repair the items as necessary so that none of the conditions specified in this subsection exist before filling or refilling the tank with waste.

b. For all the inspections required by this subparagraph, the owner or operator shall notify the cabinet in writing at least thirty (30) days prior to the filling or refilling of each tank to afford the cabinet the opportunity to inspect the tank prior to refilling. If the inspection required by this subparagraph is not planned and the owner or operator may not have known about the inspection thirty (30) days in advance of refilling the tank, the owner or operator shall notify the cabinet at least seven (7) days prior to the refilling of the tank. Notification shall be made by telephone immediately followed by written documentation demonstrating why the inspection was

unplanned. Alternatively, this notification, including the written documentation, may be made in writing and sent by express mail so that it is received by the cabinet at least seven (7) days prior to the refilling.

(3) Owners or operators who elect to install and operate the control equipment in subsection (1) of this section shall include the following information in the operating record in accordance with the requirements of Section 10(1)(a) and (k) of this administrative regulation:

(a) Internal floating roof.

1. Documentation that describes the control equipment design and certifies that the control equipment meets the specifications of subsections (1)(a) and (2)(a) of this section.

2. Records of each inspection performed as required by subsection (2)(a)1 through 4 of this section. Each record shall identify the tank on which the inspection was performed and shall contain the date the tank was inspected and the observed condition of each component of the control equipment (seals, internal floating roof, and fittings).

3. If any of the conditions described in subsection (2)(a)2 of this section are detected during the annual visual inspection required by subsection (2)(a)2 of this section, the records shall identify the tank, the nature of the defects, and the date the tank was emptied or the nature of and date the repair was made.

4. After each inspection required by subsection (2)(a)3 of this section that finds holes or tears in the seal or seal fabric, or defects in the internal floating roof, or other control equipment defects listed in subsection (2)(a)2 of this section, the records shall identify the tank and the reason it did not meet the specifications of subsection (1)(a) or (2)(a)3 of this section and describe each repair made.

(b) External floating roof.

1. Documentation that describes the control equipment design and certifies that the control equipment meets the specifications of subsections (1)(b) and (2)(b)2 through 4 of this section.

2. Records of each gap measurement performed as required by subsection (2)(b) of this section. Each record shall identify the tank in which the measurement was performed, the date of measurement, the raw data obtained in the measurement, and the calculations described in subsections (2)(b)2 and 3 of this section.

3. Records for each seal gap measurement that detects gaps exceeding the limitations specified by subsection (2)(b)4 of this section that identifies the tank, the date the tank was emptied or the repairs made, and the nature of the repair.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch

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diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed regulation affects owners and operators of hazardous waste interim status facilities that use tanks, surface impoundments, or containers.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The existing staff will have an increased workload in order to process the newly regulated entities.

2. Continuing costs or savings: Once the new entities are processed, there will be no extra costs.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs.

b. Reporting and paperwork requirements: There are no additional paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants are to be used for the implementation and enforcement of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were not considered. These changes are consistent with federal standards.

8. Assessment of expected benefits of the administrative regulation: These amendments provide consistency with current federal standards.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: The

environment and public health would improve across the Commonwealth with the implementation of this regulation.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Yes, detrimental effects could occur without the implementation of this regulation.

c. If detrimental effect would result, explain detrimental effect: Hazardous air emissions could harm human health and the environment without the implementation of this regulation.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, policies, or regulations that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? (Explain why tiering was or was not used): Yes, tiering was used. This administrative regulation applies to owners or operators of hazardous waste interim status facilities that use tanks, surface impoundments, and containers, consistent with federal standards, to protect human health and the environment. Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of hazardous waste generated or managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed regulation adopts changes that apply to air emission standards for hazardous waste tanks, surface impoundments, and containers. This regulation is necessary to maintain consistency between state and federal programs. In addition, this regulation has been modified to reflect the requirements of regulation construction specified in KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that manages hazardous waste interim status facilities which use tanks, surface impoundments, or containers.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the cabinet to establish a comprehensive program for the proper

management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(New Administrative Regulation)**

401 KAR 36:005. Definitions related to 401 KAR Chapter 36.

RELATES TO: KRS 224.01, 224.10, 40 CFR 260.10

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: This chapter implements provisions of KRS 224.46-520 and 224.46-530. This administrative regulation defines essential terms that are used in this chapter.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or otherwise specifically indicated by context, terms in 401 KAR Chapter 36 shall have the meanings given in this section.

(1) "100-year floodplain" means any land area which is subject to a one (1) percent or greater chance of flooding in any given year from any source.

(2) "100-year flood" means a flood that has a one (1) percent chance of being equaled or exceeded in any given year.

(3) "Aboveground tank" means a device meeting the definition of "tank" and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

(4) "Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

(5) "Accumulated speculatively" means that a material is accumulated before being recycled.

(a) A material is not accumulated speculatively, if the person accumulating it can show:

1. That the material is potentially recyclable and has a feasible means of being recycled; and

2. That - during the calendar year (commencing on January 1) - the amount of material that is recycled, or transferred to a different site for recycling, equals at least seventy-five (75) percent by weight or volume of the amount of that material accumulated at the beginning of the calendar year (including any material accumulated from previous years).

(b) In calculating the percentage of turnover, the seventy-five (75) percent requirement is to be applied to each material of the same type that is recycled in the same way. Materials accumulating in units that would be exempt from administrative regulation under Section 4(3) of 401 KAR 31:010 are not to be included in making the calculation. (Materials that are already defined as wastes also are not to be included in making the calculation.) Materials are no longer in

this category once they are removed from accumulation for recycling.

(6) "Active fault" means a land area which, according to the weight of geological evidence, has a reasonable probability of being affected by movement along a fault to the extent that a waste site or facility would be damaged and thereby pose a threat to human health and the environment.

(7) "Active life" of a facility means the period from the initial receipt of waste at a waste site or facility until the cabinet receives certification of final closure.

(8) "Active portion" means any area of a facility where treatment, storage, or disposal operations are being or have been conducted and which have not been closed. It includes the treated area of a landfill and the active face of a landfill. Covered, closed, or inactive portions of landfills, building roofs, and roads are excluded unless designated as "active portions" by the cabinet.

(9) "Admixed liner" means a liner made from a mixture of any of a multitude of materials, often asphalt or cement, with widely varying physical and chemical properties. Admixed liners shall be demonstrated to be structurally sound and chemically resistant to the waste placed in it so as to be capable of supporting the waste without cracking or disintegrating or allowing waste or leachate to escape.

(10) "Agricultural waste" means any nonhazardous waste resulting from the production and processing of on-the-farm agricultural products, including manures, prunings and crop residues.

(11) "Air stripping operation" is a desorption operation employed to transfer one (1) or more volatile components from a liquid mixture into a gas (air) either with or without the application of heat to the liquid. Packed towers, spray towers, and bubble-cap, sieve, or valve-type plate towers are among the process configurations used for contacting the air and a liquid.

(12) "Ampule" means a small sealed glass container for one (1) dose of sterile medicine.

(13) "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to hazardous waste management units including tanks between hazardous waste storage and treatment tanks to a point of disposal on site, or to a point of shipment for disposal off site.

(14) "Application" means the form approved by the cabinet for applying for a permit, including any additions, revisions or modifications and any narrative and drawings required by 401 KAR Chapters 30 to 48. The term includes: Part A of the application (Part A); Part B of the application (Part B); notice of intent; administration application; special waste application; or technical application.

(15) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(16) "As received waste" refers to the waste as received in the shipment from the generator or sample collector.

(17) "Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

(18) "Attenuation" means any decrease in the maximum concentration or total quantity of an applied chemical or biological constituent in a fixed time or distance traveled resulting from a physical, chemical, or biological reaction or transformation occurring in the zone of aeration or zone of saturation.

(19) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit or part of a facility, such as the plant manager, superintendent, or person of equivalent responsibility.

(20) "Average volatile organic concentration" or "average VO concentration" means the mass-weighted average volatile organic concentration of a hazardous waste as determined in accordance with the requirements of Section 4 of 401 KAR 35:281.

(21) "Base flood" means a flood that has a one (1) percent or greater chance of recurring in any year, or a flood of a magnitude

equaled or exceeded once in 100 years on the average over a significantly long period.

(22) "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

(23) "Board" shall have the meaning specified in KRS 224.46-810.

(24) "Bodily injury" shall have the meaning given by applicable Kentucky statutes. Bodily injury does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for bodily injury.

(25) "Boiler" means an enclosed device using control flame combustion and having the following characteristics:

(a) 1. The unit shall have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

2. The unit's combustion chamber and primary energy recovery section(s) shall be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section (such as water walls and superheaters) shall be physically formed into one (1) manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream) and fluidized bed combustion units; and

3. While in operation, the unit shall maintain a thermal energy recovery efficiency of at least sixty (60) percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

4. The unit shall export and utilize at least seventy-five (75) percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(b) The unit is one (1) which the cabinet has determined, on a case-by-case basis, to be a boiler, after considering the standards in 401 KAR 30:080.

(26) "Bottoms receiver" means a container or tank used to receive and collect heavier bottoms fractions of the distillation feed stream that remain in the liquid phase.

(27) "Burn" means burning for energy recovery or destruction, or processing for materials recovery or as an ingredient.

(28) "By-product" is a material that is not one (1) of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a coproduct that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

(29) "Cabinet" shall have the meaning specified in KRS 224.01-010.

(30) "Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

(31) "Cation exchange capacity" means the sum of exchangeable cations a soil can absorb expressed in milliequivalents per 100 grams of soil as determined by sampling the soil to the depth of cultivation or solid waste placement, whichever is greater, and analyzing by the summation method for distinctly acid soils or the sodium acetate

method for neutral, calcareous, or saline soils.

(32) "Certificate" shall have the meaning specified in KRS 224.46-810.

(33) "Certification" means a statement of professional opinion based upon knowledge and belief.

(34) "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements.

(35) "Closed-vent system" means a system that is not open to the atmosphere and that is composed of piping, connections, and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device.

(36) "Closure plan" means the plan for closure prepared in accordance with the requirements of Section 3 of 401 KAR 34:070 or Section 3 of 401 KAR 35:070.

(37) "Closure" shall have the meaning specified in KRS 224.01-010.

(38) "Component" means either the tank or ancillary equipment of a tank system.

(39) "Condenser" means a heat-transfer device that reduces a thermodynamic fluid from its vapor phase to its liquid phase.

(40) "Conditionally Exempt Small Quantity Generator" means:

(a) A generator who generates no more than 100 kilograms of hazardous waste in a calendar month; and

(b) A generator who generates acutely hazardous waste listed in Sections 2, 3, and 4(5) of 401 KAR 31:040 in a calendar month in quantities greater than one (1) kilogram. All quantities of that acutely hazardous waste are subject to administrative regulation under 401 KAR Chapters 32 through 39, and the notification and permitting requirements of KRS 224.01-400, 224.40-310, 224.46-510, 224.46-580, and 224.50-130 to 224.50-413.

(41) "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(42) "Connector" means flanged, screwed, welded, or other joined fitting used to connect two (2) pipelines or a pipeline and a piece of equipment. For the purposes of reporting and recordkeeping, connector means flanged fittings that are not covered by insulation or other materials that prevent location of the fittings.

(43) "Consignee" means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste is sent.

(44) "Constituent" shall have the same meaning as "hazardous waste constituent."

(45) "Container" means any portable device in which hazardous waste is transported, stored, treated, or otherwise handled, and includes transport vehicles that are containers themselves (for example, tank trucks, tanker-trailers, and rail tank cars), and containers placed on or in a transport vehicle.

(46) "Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of 401 KAR 34:245 or 35:245.

(47) "Contaminate" means introduce a substance that would cause:

(a) The concentration of that substance in the groundwater to exceed the maximum contaminant level specified in 401 KAR 30:031, Sections 5 and 6 of 401 KAR 47:030, or Section 8 of 401 KAR 34:060;

(b) An increase in the concentration of that substance in the groundwater where the existing concentration of that substance exceeds the maximum contaminant level specified in 401 KAR 30:031, 401 KAR 47:030, or Section 8 of 401 KAR 34:060; or

(c) A significant increase above established background levels, for substances that do not have an established maximum contamination level.

(48) "Contamination" means the degradation of naturally occurring

water, air, or soil quality either directly or indirectly as a result of human activities.

(49) "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in the event of a fire, explosion, or release of waste or waste constituents into the environment which has the potential for endangering human health and the environment. Financial planning to identify resources for initiation of such action is a part of contingency plan development.

(50) "Continuous recorder" means a data recording device recording an instantaneous data value at least once every fifteen (15) minutes.

(51) "Control device shutdown" means the cessation of operation of a control device for any purpose.

(52) "Control device" means an enclosed combustion device, vapor recovery system, or flare. Any device the primary function of which is the recovery or capture of solvents or other organics for use, reuse, or sale (for example, a primary condenser on a solvent recovery unit) is not a control device.

(53) "Corrective action management unit" or "CAMU" means an area within a facility that is designated by the cabinet under 401 KAR 34:287, for the purpose of implementing corrective action requirements under Section 12 of 401 KAR 34:060 and KRS 224.46-520. A CAMU shall only be used for the management of remediation wastes pursuant to implementing such corrective action requirements at the facility.

(54) "Cover" means a device or system which is placed on or over a hazardous waste such that the entire hazardous waste surface area is enclosed and sealed to reduce air emissions to the atmosphere. A cover may have openings such as access hatches, sampling ports, and gauge wells that are necessary for operation, inspection, maintenance, or repair of the unit on which the cover is installed provided that each opening is closed and sealed when not in use. Examples of covers include a fixed roof installed on a tank, a floating membrane cover installed on a surface impoundment, a lid installed on a drum, and an enclosure in which an open container is placed during waste treatment.

(55) "Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(56) "Current closure and postclosure cost estimates" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:090 or Section 1(1), (2) and (3) of 401 KAR 35:090.

(57) "Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

(58) "Current plugging and abandonment cost estimates" as used in subsection (1) of this section refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer (see 40 CFR 144.70(f)).

(59) "Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 40 CFR 144.62(a), (b), and (c).

(60) "Current postclosure cost estimate" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:100 or Section 1(1), (2) and (3) of 401 KAR 35:100.

(61) "Debris" means solid material exceeding a 60mm particle size that is intended for disposal and that is: a manufactured object; plant or animal matter; or natural geologic material. However, the following materials are not debris: Any material for which a specific treatment standard is provided in 401 KAR 37:040, namely lead acid batteries, cadmium batteries, and radioactive lead soils; Process residuals such as smelter slag and residues from the treatment of waste, wastewater, sludges, or air emission residues; and intact containers of hazardous waste that are not ruptured and that retain

at least seventy-five (75) percent of their original volume. A mixture of debris that has not been treated to the standards provided by Section 6 of 401 KAR 37:040 and other material is subject to regulation as debris if the mixture is comprised primarily of debris, by volume, based on visual inspection.

(62) "Designated facility" means a hazardous waste treatment, storage, or disposal facility which:

(a) Has received a hazardous waste site or facility permit (or a facility with interim status) in accordance with the requirements of 401 KAR Chapter 38;

(b) Has received a permit from a state authorized in accordance with 40 CFR Part 271, and EPA permit (or a facility with interim status) in accordance with 40 CFR Parts 270 and 124; or

(c) Is regulated under Section 6(3)(b) of 401 KAR 31:010 or 401 KAR Chapter 36, 40 CFR 261.6(c)(2) or 40 CFR Part 266, and that has been designated on the manifest by the generator pursuant to Section 1 of 401 KAR 32:020. If a waste is destined to a hazardous waste site or facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility shall be a facility allowed by the receiving state to accept that waste.

(63) "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in Section 4(1) and (3) of 401 KAR 43:020 and Section 4(1) and (3) of 401 KAR 43:030. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

(64) "Destruction or adverse modification" means an alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

(65) "Dike" means an embankment or ridge of either natural or manmade materials used to prevent the movement of liquids, sludges, solids, or other materials.

(66) "Direct transfer equipment" means any device (including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps) that is used to distribute, meter, or control the flow of hazardous waste between a container (for example, transport vehicle) and a boiler or industrial furnace.

(67) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

(68) "Disposal" shall have the meaning specified in KRS 224.01-010.

(69) "Distillate receiver" means a container or tank used to receive and collect liquid material (condensed) from the overhead condenser of a distillation unit and from which the condensed liquid is pumped to larger storage tanks or other process units.

(70) "Distillation operation" means an operation, either batch or continuous, separating one (1) or more feed stream(s) into two (2) or more exit streams, each exit stream having component concentrations different from those in the feed stream(s). The separation is achieved by the redistribution of the components between the liquid and vapor phase as they approach equilibrium within the distillation unit.

(71) "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(72) "Double block and bleed system" means two (2) block valves connected in series with a bleed valve or line that can vent the line between the two (2) block valves.

(73) "Draft permit" shall have the same meaning as "proposed permit".

(74) "Drip pad" means an engineered structure consisting of a curbed, free-draining base, constructed of nonearthen materials and designed to convey preservative kick-back or drippage from treated

wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(75) "Effluent Limitations" shall have the same meaning as KRS 224.01-010.

(76) "Elementary neutralization unit" means a device which:

(a) Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in Section 3 of 401 KAR 31:030, or they are listed in 401 KAR 31:040 only for this reason; and

(b) Meets the definition of tank, tank system, container, transport vehicle, or vessel in this section.

(77) "Emergency permit" means a permit issued by the cabinet to temporarily store, treat or dispose of hazardous waste in accordance with the provisions of Section 2 of 401 KAR 38:060, to temporarily manage, process, or dispose of a solid waste in accordance with the provisions of Section 2 of 401 KAR 47:150 or to temporarily store, treat, or dispose of special waste in accordance with the provisions of Section 1 of 401 KAR 45:135.

(78) "Endangered or threatened species" means any species listed as such pursuant to Section 4 of the Endangered Species Act, as amended, 16 USC 1536.

(79) "Engineer" shall have the meaning specified in KRS 322.010. An independent, professional engineer shall be registered in Kentucky pursuant to KRS 322.040 and shall be qualified to engage in waste management engineering practices.

(80) "EPA acknowledgment of consent" means the cable sent to EPA from the U.S. Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

(81) "EPA hazardous waste number" means the number assigned by EPA and the cabinet to each hazardous waste listed in 401 KAR 31:040, and to each characteristic identified in 401 KAR 31:030.

(82) "EPA identification number" means the number assigned by EPA or the cabinet to each generator; transporter; or treatment, storage, or disposal facility.

(83) "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice and which has a channel bottom that is always above the local water table.

(84) "Equipment" means each valve, pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, or flange, and any control devices or systems required by this administrative regulation.

(85) "Equivalent method" means any testing or analytical method, approved jointly by the administrator and the secretary under 401 KAR Chapter 31, or methods in 401 KAR Chapters 47 and 48, approved by the secretary of the cabinet.

(86) "Existing" indicates a boiler or industrial furnace that on or before August 21, 1991 is either in operation burning, or processing hazardous waste or for which construction (including the ancillary facilities to burn or to process the hazardous waste) has commenced.

(87) "Existing component" shall have the same meaning as "existing tank system."

(88) "Existing facility" shall have the same meaning as "existing hazardous waste site or facility".

(89) "Existing hazardous waste site or facility" means a hazardous waste facility which was in operation, or for which continuous construction had commenced, on or before November 19, 1980. A facility has commenced construction if:

(a) The owner or operator had obtained the federal, state and local approvals or permits necessary to begin physical construction; and

(b) Either:

1. A continuous on-site, physical construction program has begun;

or

2. The owner or operator has entered into contractual obligations,

which cannot be canceled or modified without substantial loss, for physical construction of the facility to be completed within a reasonable time.

(90) "Existing portion" means that land surface area of an existing hazardous waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

(91) "Existing tank system" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(a) A continuous on-site physical construction or installation program has begun; or

(b) The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the site or installation of the tank system to be completed within a reasonable time.

(92) "External floating roof" means a pontoon or double-deck type floating roof that rests on the surface of a hazardous waste being managed in a tank that has no fixed roof.

(93) "Face amount" means the total amount the insurer is obligated to pay under the policy.

(94) "Facility" means:

(a) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).

(b) For the purpose of implementing corrective action under Section 12 of 401 KAR 34:060, all contiguous property under the control of the owner or operator seeking a hazardous waste permit. This definition also applies to facilities implementing corrective action under KRS 224.46-520.

(95) "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation, and the United States Government Printing Office.

(96) "Federal, state, and local approvals or permits necessary to begin physical construction" means permits and approvals required under federal, state, or local hazardous waste control statutes, administrative regulations, or ordinances.

(97) "Final closure" of a hazardous waste site or facility means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under 401 KAR Chapters 34 and 35 are no longer conducted at the facility unless subject to the provisions in Section 5 of 401 KAR 32:030.

(98) "First attempt at repair" means to take rapid action for the purpose of stopping or reducing leakage of organic material to the atmosphere using best practices.

(99) "Fiscal year" means a twelve (12) month period for accounting and other financial purposes.

(100) "Fixed roof" means a rigid cover that is installed in a stationary position so that it does not move with fluctuations in the level of the hazardous waste placed in a tank.

(101) "Flame zone" means the portion of the combustion chamber in a boiler occupied by the flame envelope.

(102) "Floating membrane cover" means a cover consisting of a synthetic flexible membrane material that rests upon and is supported by the hazardous waste being managed in a surface impoundment.

(103) "Floating roof" means a pontoon-type or double-deck type cover that rests upon and is supported by the hazardous waste being managed in a tank, and is equipped with a closure seal or seals to close the space between the cover edge and the tank wall.

- (104) "Flood plain" means areas adjoining inland waters which are inundated by the base flood, unless otherwise specified in 401 KAR 30:031 or 401 KAR 47:030, and includes: 100-year floodplain and floodway.
- (105) "Floodway" means the channel of the waterway, stream or river and that portion of the adjoining floodplain which provides for passage of the 100-year flood flow without increasing the floodwater depth across the 100-year floodplain by more than one (1) foot.
- (106) "Flow indicator" means a device that indicates whether gas flow is present in a vent stream.
- (107) "Food chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.
- (108) "Fractionation operation" means a distillation operation or method used to separate a mixture of several volatile components of different boiling points in successive stages, each stage removing from the mixture some proportion of one of the components.
- (109) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.
- (110) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.
- (111) "Generator" shall have the meaning specified in KRS 224.01-010.
- (112) "Governing body" shall have the same meaning as KRS 224.01-010.
- (113) "Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.
- (114) "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table, and perched water zones below the B-soil horizon, including water circulating through fractures, bedding planes, and solution conduits.
- (115) "Halogenated organic compounds" or "HOCs" means those compounds having a carbon-halogen bond that are listed under 401 KAR 37:110.
- (116) "Hazardous constituent" shall have the meaning specified in KRS 224.01.010.
- (117) "Hazardous waste constituent" means a constituent which caused the cabinet to list the hazardous waste in 401 KAR 31:040, or a constituent listed in Section 5(3) of 401 KAR 31:030.
- (118) "Hazardous waste management unit shutdown" means a work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit. An unscheduled work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit for less than twenty-four (24) hours is not a hazardous waste management unit shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping operation are not hazardous waste management unit shutdowns.
- (119) "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed. Hazardous waste management units include: aboveground tank; component; existing tank system or existing component; in-ground tank; new tank system or new tank component; on-ground tank; tank system; underground tank; or unfit-for-use tank system.
- (120) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.
- (121) "Hazardous waste site or facility" means any place at which hazardous waste is treated, stored, or disposed of by landfilling, incineration, or any other method. Hazardous waste site or facility includes: boiler; disposal facility; elementary neutralization unit; incinerator; industrial furnace; hazardous waste transfer facility; injection well; landfill; land treatment facility; miscellaneous unit; pile or waste pile; replacement unit; storage facility; sludge dryer; surface impoundment; tank; thermal treatment facility; totally enclosed treatment facility; treatment facility; or wastewater treatment unit.
- (122) "Hazardous waste transfer facility" means any transportation related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation.
- (123) "Hazardous waste" shall have the meaning specified in KRS 224.01-010.
- (124) "Holocene" means the most recent epoch of the quaternary period, extending from the end of the pleistocene to the present.
- (125) "Hot well" means a container for collecting condensate as in a steam condenser serving a vacuum-jet or steam-jet ejector.
- (126) "Household waste" means any waste material (including garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).
- (127) "In existence" shall have the same meaning as "existing."
- (128) "In gas service" means that the piece of equipment contains or contacts a hazardous waste stream that is in the gaseous state at operating conditions.
- (129) "In heavy liquid service" means that the piece of equipment is not in gas service or in vapor service or in light liquid service.
- (130) "In light liquid service" means that the piece of equipment contains or contacts a waste stream where the vapor pressure of one (1) or more of the components in the stream is greater than three-tenths (0.3) kilopascals (kPa) at twenty (20) degrees Centigrade, the total concentration of the pure components having a vapor pressure greater than three-tenths (0.3) kPa at twenty (20) degrees Centigrade is equal to or greater than twenty (20) percent by weight, and the fluid is a liquid at operating conditions.
- (131) "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.
- (132) "In situ sampling systems" means nonextractive samplers or in-line samplers.
- (133) "In vacuum service" means that equipment is operating at an internal pressure that is at least five (5) kPa below ambient pressure.
- (134) "In vapor service" shall have the same meaning as "in gas service."
- (135) "In-ground tank" means a device meeting the definition of "tank" in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.
- (136) "Inactive portion" means that portion of a hazardous waste site or facility which was not operated after November 19, 1980.
- (137) "Incinerator" means any enclosed device that:
- Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or
 - Meets the definition of infrared incinerator or plasma arc incinerator.
- (138) "Incompatible waste" means a hazardous waste which is unsuitable for placement in a particular device or facility because it may cause corrosion or decay of containment materials, or unsuitable for commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.
- (139) "Independently audited" refers to an audit performed by an

independent certified public accountant in accordance with generally accepted auditing standards.

(140) "Individual generation site" means the contiguous site at or on which one (1) or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one (1) or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

(141) "Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

- (a) Cement kilns;
- (b) Lime kilns;
- (c) Aggregate kilns;
- (d) Phosphate kilns;
- (e) Coke ovens;
- (f) Blast furnaces;

(g) Smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);

- (h) Titanium dioxide chloride process oxidation reactors;
- (i) Methane reforming furnaces;
- (j) Pulping liquor recovery furnaces;

(k) Combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(l) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least three (3) percent, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of twenty (20) percent as generated; or

(m) Other devices as the cabinet may, after notice and comment, add to this list on the basis of criteria and Section 5 of 401 KAR 30:080.

(142) "Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(143) "Injection well" means a well into which fluids are injected to achieve subsurface emplacement.

(144) "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained hazardous waste or reagents used to treat the hazardous waste.

(145) "Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of a hazardous waste management unit including tank systems.

(146) "Interim status" means the designation of a hazardous waste site or facility which was in existence on November 19, 1980, and has submitted a Part A application under 401 KAR Chapter 38 or under 40 CFR Part 270 and is treated as having a permit until final administrative disposition of the application is made.

(147) "Intermittent stream" means a stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year.

(148) "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

(149) "Internal floating roof" means a floating roof that rests or floats on the surface (but not necessarily in complete contact with it) of a hazardous waste being managed in a tank that has a fixed roof.

(150) "IUC Well" means a underground injection control well as provided in 40 CFR Part 144.

(151) "Karst terrain" means a type of topography where limestone, dolomite or gypsum is present and is characterized by naturally occurring closed topographic depressions or sinkholes, caves, disrupted surface drainage, and well developed underground solution channels formed by dissolution of these rocks by water moving underground.

(152) "Key personnel" shall have the meaning specified in KRS 224.01-010.

(153) "Lab pack" means any large container equal to or smaller than fifty-five (55) gallons that holds many smaller containers of various content tightly secured with packing material.

(154) "Lamp" means the bulb or tube portion of a lighting device specifically designed to produce radiant energy, most often in the ultraviolet (UV), visible, and infra-red (IR) regions of the electromagnetic spectrum. Examples of common lamps include, but is not limited to, incandescent, fluorescent, high pressure sodium, mercury vapor, metal halide, high intensity discharge, and neon lamps.

(155) "Land disposal" shall have the meaning specified in KRS 224.01-010.

(156) "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface. These facilities are disposal facilities if the waste will remain after closure.

(157) "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

(158) "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(159) "Large quantity handler of universal waste" means a universal waste handler who accumulates 5,000 kilograms or more total universal waste (batteries, lamps, pesticides, or thermostats, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total of universal waste is accumulated.

(160) "Leachate" means any liquid including any suspended components in the liquid, that has percolated through or drained from waste.

(161) "Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment system or the presence of a release of hazardous waste, hazardous waste constituents or accumulated liquid in the secondary containment system. Such a system shall employ operational controls (daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment system or the presence of a release of hazardous waste constituents or accumulated liquids into the secondary containment system.

(162) "Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

(163) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(164) "Liner" means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, ground water, or surface water at any time during the active life of the facility.

(165) "Liquid-mounted seal" means a foam or liquid-filled primary

seal mounted in contact with the hazardous waste between the tank wall and the floating roof continuously around the circumference of the tank.

(166) "Local government" means the fiscal court of the county, urban-county government, or governing body of an incorporated municipality wherein a hazardous waste landfill or other site or facility for the land disposal of hazardous waste is proposed.

(167) "Major modification" means for hazardous waste sites or facilities, a change in ownership where the cabinet determines that other changes in the permit are necessary as a result of the change in ownership or operational control, area occupied, disposal method, or other significant change in the operation of a waste site or facility (Note: Minor modifications are described in Section 3 of 401 KAR 38:040).

(168) "Malfunction" means any sudden failure of a control device or a hazardous waste management unit or failure of a hazardous waste management unit to operate in a normal or usual manner, so that organic emissions are increased.

(169) "Manifest document number" means the EPA twelve (12) digit identification number assigned to the generator plus a unique, serially increasing, five (5) digit document number assigned to the manifest by the generator for recordkeeping and reporting purposes.

(170) "Manifest" shall have the meaning specified in KRS 224.01-010.

(171) "Maximum organic vapor pressure" means the equilibrium partial pressure exerted by the hazardous waste contained in a tank determined at the temperature equal to either:

(a) the local maximum monthly average temperature as reported by the National Weather Service when the hazardous waste is stored or treated at ambient temperature; or

(b) the highest calendar-month average temperature of the hazardous waste when the hazardous waste is stored at temperatures above the ambient temperature or when the hazardous waste is stored or treated at temperatures below the ambient temperature.

(172) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

(173) "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of, and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR Part 146, containment building, corrective action management unit, or unit eligible for a research, development, and demonstration permit under Section 6 of 401 KAR 38:060.

(174) "Monitoring well" means a well used to obtain water samples for water quality and quantity analysis and groundwater levels.

(175) "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.

(176) "Movement" means that hazardous waste transported to a facility in an individual vehicle.

(177) "Net working capital" means current assets minus current liabilities.

(178) "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

(179) "New tank component" shall have the same meaning as "new tank system."

(180) "New tank system" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation commenced after July 14, 1986; however, for purposes of Section 4(7)(b) of 401 KAR 34:190 and Section 4(7)(b) of 401 KAR 35:190, a new tank system is one for which construction commenced after July 14, 1986.

(181) "New" means any hazardous waste site or facility that

commenced construction after November 19, 1980.

(182) "No detectable organic emissions" means no escape of organics from a device or system to the atmosphere as determined by an instrument reading less than 500 parts per million by volume (ppmv) above the background level at each joint, fitting, and seal when measured in accordance with the requirements of Method 21 in 40 CFR part 60, appendix A, and by no visible openings or defects in the device or system such as rips, tears, or gaps.

(183) "Nonsudden accidental occurrence" means an occurrence that takes place over time and involves continuous or repeated exposure.

(184) "Nonwastewaters" means wastes that do not meet the criteria for wastewaters found in the definition for wastewaters.

(185) "Not detected" means at or below the lower method calibration limit (MCL) in SW-846, Method 8290, Table 1.

(186) "Off-site" means properties noncontiguous to the site.

(187) "On-site" means on the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing, as opposed to going along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access is also considered on-site property.

(188) "Onground tank" means a device meeting the definition of tank that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(189) "Open burning" means the combustion of any material or solid waste without:

(a) Control of combustion air to maintain adequate temperature for efficient combustion;

(b) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(c) Control of emission of the gaseous combustion products.

(190) "Open-ended valve or line" means any valve, except pressure relief valves, having one (1) side of the valve seat in contact with process fluid and one (1) side open to the atmosphere, either directly or through open piping.

(191) "Operational plan" means the approved plan of operations filed with the cabinet which describes the method of operation that the permittee will use in the treatment, storage, or disposal of wastes.

(192) "Operator" means any person responsible for overall operation of an on-site or off-site waste facility, including any private contractor conducting operational activities at a federal facility.

(193) "Other site or facility for the land disposal of hazardous waste" means a disposal facility but shall not include a storage facility or a treatment facility.

(194) "Owner" means any person who owns an on-site or off-site waste facility, or any part of a facility.

(195) "Parent corporation" means a corporation which directly owns at least fifty (50) percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

(196) "Part A of the application" or "Part A" means the standard forms or format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:080.

(197) "Part B of the application" or "Part B" means the standard format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:090 to 401 KAR 38:210.

(198) "Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of 401 KAR Chapters 34 and 35 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface

impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

(199) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface run-off. The term does not include "intermittent stream" or "ephemeral stream".

(200) "Permit by rule" means authorization allowing certain classes of sites or facilities to manage waste consistent with 401 KAR Chapters 30 to 49, without submission of a registration or permit application to the cabinet. Examples of hazardous waste sites or facilities which are permitted by rule include facilities operating under an interim status permit and facilities identified in Section 1 of 401 KAR 38:060.

(201) "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management administrative regulations. The term permit includes permit-by-rule, registered permit-by-rule, research, development, and demonstration permit, and emergency permit. However, the term permit does not include draft permit or proposed permit.

(202) "Permittee" means any person holding a valid permit issued by the cabinet to manage, treat, store, or dispose of waste.

(203) "Person" shall have the meaning specified in KRS 224.01-010.

(204) "Personnel" or "facility personnel" means all persons who work at or oversee the operations of a waste facility, and whose actions or failure to act may result in noncompliance with the requirements of the waste management administrative regulations.

(205) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(a) Is a new animal drug under FFDCa section 201(w), or

(b) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug; or

(c) Is an animal feed under FFDCa section 201(x) that bears or contains any substances described by paragraph (a) or (b) of this subsection.

(206) "Pile" or "waste pile" means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

(207) "Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame and which is not listed as an industrial furnace.

(208) "Point of compliance" means for solid waste site and facilities, groundwater monitoring wells located within 250 feet of the waste boundary as approved by the cabinet.

(209) "Point of waste origination" means as follows:

(a) When the facility owner or operator is the generator of the hazardous waste, the point of waste origination means the point where a solid waste produced by a system, process, or waste management unit is determined to be a hazardous waste as defined in 40 CFR part 261.

(b) When the facility owner and operator are not the generator of the hazardous waste, point of waste origination means the point where the owner or operator accepts delivery or takes possession of the hazardous waste.

(210) "Point of waste treatment" means the point where a hazardous waste exits a waste management unit used to destroy, degrade, or remove organics in the hazardous waste.

(211) "Point source" means any discernible, confined, and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(212) "Pollutant" shall have the same meaning as KRS 224.01-010.

(213) "Polychlorinated biphenyls" or "PCB" means halogenated organic compounds defined in accordance with 40 CFR 761.2 as of July 1989.

(214) "Postclosure care" means the manner in which a facility shall be maintained when it no longer accepts waste for disposal.

(215) "Postclosure monitoring and maintenance" shall have the meaning specified in KRS 224.01-010.

(216) "Postclosure plan" means the plan for postclosure care prepared in accordance with the requirements of Sections 8 to 11 of 401 KAR 34:070 or Sections 8 to 11 of 401 KAR 35:070.

(217) "Pressure release" means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device.

(218) "Primary exporter" means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with Section 1 of 401 KAR 32:020 which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

(219) "Process heater" means a device that transfers heat liberated by burning fuel to fluids contained in tubes, including all fluids except water that are heated to produce steam.

(220) "Process vent" means any open-ended pipe or stack that is vented to the atmosphere either directly, through a vacuum-producing system, or through a tank (distillate receiver, condenser, bottoms receiver, surge control tank, separator tank, or hot well) associated with hazardous waste distillation fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations.

(221) "Property damage" shall have the meaning given by applicable Kentucky statutes. Property damage does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for property damage.

(222) "Proposed permit" means a document prepared by the cabinet indicating the cabinet's tentative decision to issue or deny, modify, revoke or terminate a permit.

(223) "Publicly owned treatment works" or "POTW" shall have the meaning specified in KRS 224.01-010.

(224) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump.

(225) "Qualified groundwater scientist" means a geologist registered in Kentucky who has received a baccalaureate or postgraduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields to enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

(226) "Receiving country" means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal (except short-term storage incidental to transportation).

(227) "Recharge zone" means an area supplying the water which enters an underground drinking water source.

(228) "Reclaimed" means a material that is processed to recover a usable product, or that is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents.

(229) "Recovered material" shall have the meaning specified in KRS 224.01-010.

(230) "Recyclable materials" means hazardous wastes that are recycled.

(231) "Recycled" means a material that is used, reused, or reclaimed.

(232) "Recycling" shall have the meaning specified in KRS 224.01-010.

(233) "Regional integrated waste treatment and disposal demonstration facility" shall have the meaning specified in KRS 224.01-010.

(234) "Regulated unit" means hazardous waste land disposal sites or facilities, or portions of existing hazardous waste land disposal sites or facilities that continued to receive waste after January 26, 1983.

(235) "Remediation waste" means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under Section 12 of 401 KAR 34:060 and KRS 224.46-520. For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing KRS 224.46-520 for releases beyond the facility boundary.

(236) "Repaired" means that equipment is adjusted, or otherwise altered, to eliminate a leak.

(237) "Replacement unit" means a landfill, surface impoundment, or waste pile unit from which all or substantially all of the waste is removed, and that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or approved corrective action.

(238) "Representative sample" means a sample of a universe or whole (for example, waste pile, lagoon, or groundwater) which can be expected to exhibit the average properties of the universe or whole.

(239) "Research, development, and demonstration permit" mean a permit issued by the cabinet for a hazardous waste treatment facility that utilizes an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under 401 KAR Chapters 34 through 36.

(240) "Resource recovery" means the recovery of material or energy from waste.

(241) "Run-off" means any rainwater, leachate, or other liquid that drains overland from any part of a facility.

(242) "Run-on" means any rainwater, leachate, or other liquid that drains overland onto any part of a facility.

(243) "Saturated zone" shall have the same meaning as "zone of saturation".

(244) "Schedule of compliance" means a schedule of remedial measures included in a permit or cabinet order, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with KRS Chapter 224 and 401 KAR Chapters 30 to 49.

(245) "Scrap metal" is bits and pieces of metal parts (for example, bars, turnings, rods, sheets, or wire) or metal pieces that may be combined together with bolts or soldering (for example, radiators, scrap automobiles, or railroad boxcars), which when worn or superfluous can be recycled.

(246) "Secretary" shall have the meaning specified in KRS 224.01-010.

(247) "Sensor" means a device that measures a physical quantity or the change in a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

(248) "Separator tank" means a device used for separation of two immiscible liquids.

(249) "Sewage system" shall have the meaning specified in KRS 224.01-010.

(250) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the waste facility or activity.

(251) "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 BTU per pound of sludge treated on a wet-weight basis.

(252) "Sludge" means any solid, semisolid, or liquid waste

generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.

(253) "Small quantity generator" means a generator who generates more than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month.

(254) "Small quantity handler of universal waste" means a universal waste handler who does not accumulate more than 5,000 kilograms of universal waste (batteries, lamps, pesticides, or thermostats, collected collectively) at any time.

(255) "Solid waste management unit" shall mean any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at a facility at which solid wastes have been routinely and systematically released.

(256) "Solvent extraction operation" means an operation or method of separation in which a solid or solution is contacted with a liquid solvent (the two (2) being mutually insoluble) to preferentially dissolve and transfer one (1) or more components into the solvent.

(257) "Sorb" means to either adsorb, absorb, or both.

(258) "Sorbent" means a material that is used to soak up freeliquids by either adsorption or absorption, or both.

(259) "Spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

(260) "Spill" means any accidental spilling, leaking, pumping, pouring, emitting, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes into or on any land or water.

(261) "Start-up" means the setting in operation of a hazardous waste management unit or control device for any purpose.

(262) "State" means any of the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands or Guam but does not include any foreign country.

(263) "Steam stripping operation" means a distillation operation in which vaporization of a volatile constituents of a liquid mixture takes place by the introduction of steam directly into the charge.

(264) "Storage facility" means a facility or part of a facility at which hazardous waste is held for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere. A generator who accumulates his own hazardous wastes in an approved manner for less than ninety (90) days for subsequent transport on site or off site is not operating or maintaining a storage facility.

(265) "Storage of hazardous waste" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed, or stored elsewhere.

(266) "Storage" shall have the meaning specified in KRS 224.01-010.

(267) "Substantial business relationship" means the extent of a business relationship necessary to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" shall arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the cabinet.

(268) "Sudden accidental occurrence" means an occurrence which is not continuous or repeated in nature.

(269) "Sump" means any pit or reservoir that meets the definition of tank, and those troughs and trenches connected to it, that serves to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile administrative regulations, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(270) "Surface impoundment" means a facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(271) "Surge control tank" means a large-sized pipe or storage reservoir sufficient to contain the surging liquid discharge of the process tank to which it is connected.

(272) "Tangible net worth" means the tangible assets that remain after deducting liabilities; these assets would not include intangibles such as goodwill and rights to patents or royalties.

(273) "Tank" means a stationary device designed to contain an accumulation of hazardous waste that is constructed primarily of nonearthen materials (for example, wood, concrete, steel, or plastic) which provide structural support and which does not meet the definition of any other unit.

(274) "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

(275) "Termination" shall have the meaning specified in KRS 224.01-010.

(276) "The full amount of the liability coverage to be provided" means the amount of coverage for sudden and nonsudden occurrences required to be provided by the owner or operator, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(277) "Thermal treatment facility" means a facility or part of a facility which uses elevated temperatures as the primary means to change the chemical, physical or biological character or composition of hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge.

(278) "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge (see also "incinerator" and "open burning").

(279) "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of Section 4(3)(b) of 401 KAR 43:020 or Section 4(3)(b) of 401 KAR 43:030.

(280) "Thin-film evaporation operation" means a distillation operation that employs a heating surface consisting of a large diameter tube that may be either straight or tapered, horizontal or vertical. Liquid is spread on the tube wall by a rotating assembly of blades that maintain a close clearance from the wall or actually ride on the film of liquid on the wall.

(281) "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which acid is neutralized.

(282) "Transit country" means any foreign country, other than a receiving country, through which a hazardous waste is transported.

(283) "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body is a separate transport vehicle.

(284) "Transportation" shall have the meaning specified in KRS 224.01-010.

(285) "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway or water.

(286) "Treatability study" means :

(a) A study in which a hazardous waste is subjected to a treatment process to determine:

1. Whether the waste is amenable to the treatment process;
2. What pretreatment, if any, is required;
3. The optimal process conditions needed to achieve the desired treatment;
4. The efficiency of a treatment process for a specific waste or wastes; or
5. The characteristics and volumes of residuals from a particular treatment process.

(b) For the purpose of 401 KAR 31:010, Section 4(5) and (6), exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies.

(c) A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

(287) "Treatment facility" means a facility or part of a facility using any method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste nonhazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

(288) "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

(289) "Treatment" shall have the meaning specified in KRS 224.01-010.

(290) "Underground drinking water source" means:

- (a) An aquifer supplying drinking water for human consumption; or
- (b) An aquifer in which the groundwater contains less than 10,000 mg/l total dissolved solids.

(291) "Underground injection" means the subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well".)

(292) "Underground tank" means a device meeting the definition of "tank" in this section whose entire surface area is totally below the surface of and covered by the ground.

(293) "Underlying hazardous constituent" means any constituent listed in Section 1 of 401 KAR 37:040, Table - Treatment Standards for Hazardous Wastes, except vanadium and zinc, which can reasonably be expected to be present at the point of generation of the hazardous waste, at a concentration above the constituent-specific treatment standards.

(294) "Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

(295) "Universal Waste" means any of the following hazardous wastes that are subject to the universal waste requirements of 401 KAR Chapter 43:

- (a) Batteries as described in Section 2 of 401 KAR 43:010;
- (b) Pesticides as described in Section 3 of 401 KAR 43:010;
- (c) Thermostats as described in Section 4 of 401 KAR 43:010;

and

- (d) Spent Lamps as described in Section 5 of 401 KAR 43:010.
- (296) "Universal waste handler":

(a) Means:

- (1) A generator of universal waste; or
- (2) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to

another universal waste handler, to a destination facility, or to a foreign destination.

(b) Does not mean:

1. A person who treats (except under the provisions of Sections 4(1) or (3) of 401 KAR 43:020 or Sections 4(1) or (3) of 401 KAR 43:030), disposes of, or recycles universal waste; or

2. A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

(297) "Universal waste transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten (10) days or less.

(298) "Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

(299) "Unsaturated zone" shall have the same meaning as "Zone of aeration".

(300) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(301) "Used oil" shall have the same meaning as KRS 224.50-545.

(302) "Used or reused" means a material that is either:

(a) Employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one (1) process used as feedstock in another process). However, a material shall not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

(b) Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

(303) "Vapor incinerator" means any enclosed combustion device that is used for destroying organic compounds and does not extract energy in the form of steam or process heat.

(304) "Vapor recovery system" means that equipment, device, or apparatus capable of collecting vapors and gases discharged from a storage tank, and a vapor processing system capable of affecting such vapors and gases so as to prevent their emission into the atmosphere.

(305) "Vapor-mounted seal" means a foam-filled primary seal mounted continuously around the circumference of the tank so that there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the hazardous waste surface, and the floating roof.

(306) "Vented" means discharged through an opening, typically an open-ended pipe or stack, allowing the passage of a stream of liquids, gases, or fumes into the atmosphere. The passage of liquids, gases, or fumes is caused by mechanical means such as compressors or vacuum-producing systems or by process-related means such as evaporation produced by heating and not caused by tank loading and unloading (work losses) or by natural means such as diurnal temperature changes.

(307) "Vessel" means any watercraft used or capable of being used as a means of transportation on the water.

(308) "Volatile organic concentration" or "VO concentration" means the fraction by weight of organic compounds in a hazardous waste expressed in terms of parts per million (ppmw) as determined by direct measurement using Method 25D or by knowledge of the waste in accordance with the requirements of Section 4 of 401 KAR 35:040.

(309) "Washout" means the carrying away of waste by waters as a result of flooding.

(310) "Waste boundary" means the outermost perimeter of the waste (projected in the horizontal plane) as it would exist at completion of the disposal activity.

(311) "Waste determination" means performing all applicable procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine whether a hazardous waste meets standards specified in 401 KAR Chapter 35. Examples of a waste determination include performing the procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine the average VO concentration of a hazardous waste at the point of waste origination; the average VO concentration of a hazardous waste at the point of waste treatment and comparing the results to the exit concentration limit specified for the process used to treat the hazardous waste; determining the organic reduction efficiency and the organic biodegradation efficiency for a biological process used to treat a hazardous waste and comparing the results to the applicable standards; or the maximum volatile organic vapor pressure for a hazardous waste in a tank and comparing the results to the applicable standards.

(312) "Waste pile" shall have the same meaning as "pile".

(313) "Waste stabilization process" means any physical or chemical process used to either reduce the mobility of hazardous constituents in a hazardous waste or eliminate free liquids as determined by Test Method 9095 (Paint Filter Liquids Test) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW-846, Third Edition, September 1986, as amended by Update I, November 15, 1992 (incorporated by reference-refer to § 260.11 of this chapter). A waste stabilization process includes mixing the hazardous waste with binders or other materials, and curing the resulting hazardous waste and binder mixture. Other synonymous terms used to refer to this process are "waste fixation" or "waste solidification."

(314) "Waste" shall have the meaning specified in KRS 224.01-010.

(315) "Wastewaters" means wastes that contain less than one (1) percent by weight total organic carbon (TOC) and less than one (1) percent by weight total suspended solids (TSS), with the following exceptions:

(a) F001, F002, F003, F004, F005, wastewaters are solvent-water mixtures that contain less than one (1) percent by weight TOC or less than one (1) percent by weight total F001, F002, F003, F004, F005 solvent constituents listed in Section 1 of 401 KAR 37:040 in Table Treatment Standards for Hazardous Waste;

(b) K011, K013, K014 wastewaters contain less than five (5) percent by weight TOC and less than one (1) percent by weight TSS, as generated; and

(c) K103 and K104 wastewaters contain less than four (4) percent by weight TOC and less than one (1) percent by weight TSS.

(316) "Wastewater treatment unit" means a device that:

(a) Is part of a wastewater treatment facility that is subject to administrative regulation under either section 402 or 307(b) of the CWA;

(b) Receives and treats or stores an influent wastewater which is a hazardous waste as defined in 401 KAR 31:010, Section 3; or generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in 401 KAR 31:010, Section 3; or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Section 3 of 401 KAR 31:010; and

(c) Meets the definition of tank or tank system in this administrative regulation.

(317) "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

(318) "Water" or "waters of the Commonwealth" shall have the meaning specified in KRS 224.01-010.

(319) "Well" means any shaft or pit dug or bored into the earth, generally of cylindrical form, and often walled with bricks or tubing to

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prevent the earth from caving in.

(320) "Wetlands" means land that has a predominance of hydric soils and is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(321) "Zone of aeration" means that region of the soil or rock between the land surface and the nearest saturated zone in which the interstices are occupied partially by air.

(322) "Zone of engineering control" means an area under the control of the owner or operator that upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to waters of the Commonwealth.

(323) "Zone of saturation" means that part of the earth's crust containing groundwater in which all voids, large and small, are filled with liquid.

Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by context, acronyms and abbreviations used in 401 KAR Chapter 36 shall have the meaning as identified in Table 1 of this administrative regulation.

Table 1. Acronyms and Abbreviations.

Am.	Amended
C	Corrosive waste
CAA	Clean Air Act, as amended
CFR	Code of Federal Regulations
cm	Centimeter
cm ²	Centimeter squared
CO	Carbon monoxide
CO ₂	Carbon dioxide
CWA	Clean Water Act, as amended
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980
DOT	United States Department of Transportation
DRE	Destruction and removal efficiency
E	Explosive waste
eff.	Effective
EPA	United States Environmental Protection Agency
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act
FIA	Federal Insurance Administration
FR	Federal Register
H	Acutely hazardous waste
ha	Hectare
HTMR	High temperature metals recovery
HSWA	Hazardous and Solid Waste Amendments of 1994
I	Ignitable waste
KAR	Kentucky Administrative Regulation
kg	Kilogram
KPDES	Kentucky Pollution Discharge Elimination System
KRS	Kentucky Revised Statute
Ky.R.	Administrative Register of Kentucky
l	Liter
LC	Lethal concentration
LD	Lethal dose
ml	Milliliter
mm	Millimeter
N	Normal
NESHAPS	National Emissions Standards for Hazardous Air Pollutants
NPDES	National Pollutant and Discharge Elimination System
PCB	Polychlorinated biphenyl
pCi/l	Picocuries per liter

PHC	Principal hazardous constituent
Permit POHC	Permitted principal organic hazardous constituent
PM	Particulate matter
POHC	Principal organic hazardous constituent
ppm	parts per million
Trial POHC	Trial burn principal organic hazardous constituent
POTW	Publicly owned treatment works
PSD	Prevention of significant deterioration
psi	Pounds per square inch
psig	Pounds per square inch gauge
R	Reactive waste
RCRA	Resource Conservation and Recovery Act, as amended
SDWA	Safe Drinking Water Act, as amended
SEC	Securities and Exchange Commission
SIC	Standard Industrial Classification Code
SPCC	Spill Prevention, Control, and Countermeasures Plan
T	Toxic waste
UIC	Underground Injection Control
UICP	Underground Injection Control Program
USC	United States Code
U.S. EPA	United States Environmental Protection Agency
USGS	United States Geological Survey
USPS	United States Postal Service

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

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1. Type and number of entities affected: This regulation does not affect any entities, because it only defines terms used in the chapter. The regulation was promulgated to comply with KRS 13A.222.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The cabinet will experience no additional costs or savings by promulgating the amendments to this regulation.

2. Continuing costs or savings: No requirements have been imposed to affect costs and savings.

3. Additional factors increasing or decreasing costs: There will be no additional factors affecting costs.

b. Reporting and paperwork requirements: There will be no extra paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on the state and local revenue with the promulgation of this regulation.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No costs are imposed with the promulgation of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: There were no other alternatives.

8. Assessment of expected benefits of the administrative regulation: The benefit is having the definitions clearly stated at the beginning of each chapter.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Not applicable since no requirements are imposed.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? (Explain why tiering was or was not used): Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of hazardous waste generated or managed and type of management activities performed by the

owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments establish definitions of hazardous waste terms and the clarification of certain definitions. This regulation is necessary to maintain consistency between state and federal programs. In addition, the regulation has been modified to reflect regulation construction specified in KRS 13A.222.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that manages hazardous waste.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. This administrative regulation establishes definitions for all terms within 401 KAR Chapter 36. These terms are assimilated from existing state and federal regulatory definitions and existing statutory definitions where applicable.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue

Expenditures (+/-): Because this administrative regulation only establishes definitions for 401 KAR Chapter 36, this administrative regulation will not affect state, county, or local expenditures.

Other Explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (New Administrative Regulation)

401 KAR 37:005. Definitions related to 401 KAR Chapter 37.

RELATES TO: KRS 224.01, 224.10, 224.46, 40 CFR 260.10, 268.2

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-505,

224.46-520

NECESSITY AND FUNCTION: This chapter implements provisions of KRS 224.46-505 and 224.46-520 relative to land disposal restrictions. This administrative regulation defines essential terms that are used in this chapter.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or otherwise specifically indicated by context, terms in 401 KAR Chapter 37 shall have the meanings given in this Section.

(1) "100-year floodplain" means any land area which is subject to a one (1) percent or greater chance of flooding in any given year from any source.

(2) "100-year flood" means a flood that has a one (1) percent chance of being equaled or exceeded in any given year.

(3) "Aboveground tank" means a device meeting the definition of "tank" and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

(4) "Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

(5) "Accumulated speculatively" means that a material is accumulated before being recycled.

(a) A material is not accumulated speculatively, if the person accumulating it can show:

1. That the material is potentially recyclable and has a feasible means of being recycled; and

2. That - during the calendar year (commencing on January 1) - the amount of material that is recycled, or transferred to a different site for recycling, equals at least seventy-five (75) percent by weight or volume of the amount of that material accumulated at the beginning of the calendar year (including any material accumulated from previous years).

(b) In calculating the percentage of turnover, the seventy-five (75) percent requirement is to be applied to each material of the same type that is recycled in the same way. Materials accumulating in units that would be exempt from administrative regulation under Section 4(3) of 401 KAR 31:010 are not to be included in making the calculation. (Materials that are already defined as wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling.

(6) "Active fault" means a land area which, according to the weight of geological evidence, has a reasonable probability of being affected by movement along a fault to the extent that a waste site or facility would be damaged and thereby pose a threat to human health and the environment.

(7) "Active life" of a facility means the period from the initial receipt of waste at a waste site or facility until the cabinet receives certification of final closure.

(8) "Active portion" means any area of a facility where treatment, storage, or disposal operations are being or have been conducted and which have not been closed. It includes the treated area of a landfarm and the active face of a landfill. Covered, closed, or inactive portions of landfills, building roofs, and roads are excluded unless designated as "active portions" by the cabinet.

(9) "Admixed liner" means a liner made from a mixture of any of a multitude of materials, often asphalt or cement, with widely varying physical and chemical properties. Admixed liners shall be demonstrated to be structurally sound and chemically resistant to the waste placed in it so as to be capable of supporting the waste without cracking or disintegrating or allowing waste or leachate to escape.

(10) "Agricultural waste" means any nonhazardous waste resulting from the production and processing of on-the-farm agricultural products, including manures, prunings and crop residues.

(11) "Air stripping operation" is a desorption operation employed

to transfer one (1) or more volatile components from a liquid mixture into a gas (air) either with or without the application of heat to the liquid. Packed towers, spray towers, and bubble-cap, sieve, or valve-type plate towers are among the process configurations used for contacting the air and a liquid.

(12) "Ampule" means a small sealed glass container for one (1) dose of sterile medicine.

(13) "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to hazardous waste management units including tanks between hazardous waste storage and treatment tanks to a point of disposal on site, or to a point of shipment for disposal off site.

(14) "Application" means the form approved by the cabinet for applying for a permit, including any additions, revisions or modifications and any narrative and drawings required by 401 KAR Chapters 30 to 48. The term includes: Part A of the application (Part A); Part B of the application (Part B); notice of intent; administration application; special waste application; or technical application.

(15) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(16) "As received waste" refers to the waste as received in the shipment from the generator or sample collector.

(17) "Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

(18) "Attenuation" means any decrease in the maximum concentration or total quantity of an applied chemical or biological constituent in a fixed time or distance traveled resulting from a physical, chemical, or biological reaction or transformation occurring in the zone of aeration or zone of saturation.

(19) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit or part of a facility, such as the plant manager, superintendent, or person of equivalent responsibility.

(20) "Average volatile organic concentration" or "average VO concentration" means the mass-weighted average volatile organic concentration of a hazardous waste as determined in accordance with the requirements of Section 4 of 401 KAR 35:281.

(21) "Base flood" means a flood that has a one (1) percent or greater chance of recurring in any year, or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

(22) "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

(23) "Board" shall have the meaning specified in KRS 224.46-810.

(24) "Bodily injury" shall have the meaning given by applicable Kentucky statutes. Bodily injury does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for bodily injury.

(25) "Boiler" means an enclosed device using control flame combustion and having the following characteristics:

a)1. The unit shall have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

2. The unit's combustion chamber and primary energy recovery section(s) shall be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section (such as water walls and superheaters) shall be physically formed into one (1) manufactured or assembled unit. A unit in which the combustion

chamber and the primary energy recovery section are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream) and fluidized bed combustion units; and

3. While in operation, the unit shall maintain a thermal energy recovery efficiency of at least sixty (60) percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

4. The unit shall export and utilize at least seventy-five (75) percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(b) The unit is one (1) which the cabinet has determined, on a case-by-case basis, to be a boiler, after considering the standards in 401 KAR 30:080.

(26) "Bottoms receiver" means a container or tank used to receive and collect heavier bottoms fractions of the distillation feed stream that remain in the liquid phase.

(27) "Burn" means burning for energy recovery or destruction, or processing for materials recovery or as an ingredient.

(28) "By-product" is a material that is not one (1) of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a coproduct that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

(29) "Cabinet" shall have the meaning specified in KRS 224.01-010.

(30) "Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

(31) "Cation exchange capacity" means the sum of exchangeable cations a soil can absorb expressed in milliequivalents per 100 grams of soil as determined by sampling the soil to the depth of cultivation or solid waste placement, whichever is greater, and analyzing by the summation method for distinctly acid soils or the sodium acetate method for neutral, calcareous, or saline soils.

(32) "Certificate" shall have the meaning specified in KRS 224.46-810.

(33) "Certification" means a statement of professional opinion based upon knowledge and belief.

(34) "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements.

(35) "Closed-vent system" means a system that is not open to the atmosphere and that is composed of piping, connections, and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device.

(36) "Closure plan" means the plan for closure prepared in accordance with the requirements of Section 3 of 401 KAR 34:070 or Section 3 of 401 KAR 35:070.

(37) "Closure" shall have the meaning specified in KRS 224.01-010.

(38) "Component" means either the tank or ancillary equipment of a tank system.

(39) "Condenser" means a heat-transfer device that reduces a thermodynamic fluid from its vapor phase to its liquid phase.

(40) "Conditionally exempt small quantity generator" means:

(a) A generator who generates no more than 100 kilograms of hazardous waste in a calendar month; and

(b) A generator who generates acutely hazardous waste listed in

Sections 2, 3, and 4(5) of 401 KAR 31:040 in a calendar month in quantities greater than one (1) kilogram. All quantities of that acutely hazardous waste are subject to administrative regulation under 401 KAR Chapters 32 through 39, and the notification and permitting requirements of KRS 224.01-400, 224.40-310, 224.46-510, 224.46-580, and 224.50-130 to 224.50-413.

(41) "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(42) "Connector" means flanged, screwed, welded, or other joined fitting used to connect two (2) pipelines or a pipeline and a piece of equipment. For the purposes of reporting and recordkeeping, connector means flanged fittings that are not covered by insulation or other materials that prevent location of the fittings.

(43) "Consignee" means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste is sent.

(44) "Constituent" shall have the same meaning as "hazardous waste constituent."

(45) "Container" means any portable device in which hazardous waste is transported, stored, treated, or otherwise handled, and includes transport vehicles that are containers themselves (for example, tank trucks, tanker-trailers, and rail tank cars), and containers placed on or in a transport vehicle.

(46) "Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of 401 KAR 34:245 or 35:245.

(47) "Contaminate" means introduce a substance that would cause:

(a) The concentration of that substance in the groundwater to exceed the maximum contaminant level specified in 401 KAR 30:031, Sections 5 and 6 of 401 KAR 47:030, or Section 8 of 401 KAR 34:060;

(b) An increase in the concentration of that substance in the groundwater where the existing concentration of that substance exceeds the maximum contaminant level specified in 401 KAR 30:031, 401 KAR 47:030, or Section 8 of 401 KAR 34:060; or

(c) A significant increase above established background levels, for substances that do not have an established maximum contamination level.

(48) "Contamination" means the degradation of naturally occurring water, air, or soil quality either directly or indirectly as a result of human activities.

(49) "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in the event of a fire, explosion, or release of waste or waste constituents into the environment which has the potential for endangering human health and the environment. Financial planning to identify resources for initiation of such action is a part of contingency plan development.

(50) "Continuous recorder" means a data recording device recording an instantaneous data value at least once every 15 minutes.

(51) "Control device shutdown" means the cessation of operation of a control device for any purpose.

(52) "Control device" means an enclosed combustion device, vapor recovery system, or flare. Any device the primary function of which is the recovery or capture of solvents or other organics for use, reuse, or sale (for example, a primary condenser on a solvent recovery unit) is not a control device.

(53) "Corrective action management unit" or "CAMU" means an area within a facility that is designated by the cabinet under 401 KAR 34:287, for the purpose of implementing corrective action requirements under Section 12 of 401 KAR 34:060 and KRS 224.46-520. A CAMU shall only be used for the management of remediation wastes pursuant to implementing such corrective action requirements at the

facility.

(54) "Cover" means a device or system which is placed on or over a hazardous waste such that the entire hazardous waste surface area is enclosed and sealed to reduce air emissions to the atmosphere. A cover may have openings such as access hatches, sampling ports, and gauge wells that are necessary for operation, inspection, maintenance, or repair of the unit on which the cover is installed provided that each opening is closed and sealed when not in use. Examples of covers include a fixed roof installed on a tank, a floating membrane cover installed on a surface impoundment, a lid installed on a drum, and an enclosure in which an open container is placed during waste treatment.

(55) "Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(56) "Current closure and postclosure cost estimates" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:090 or Section 1(1), (2) and (3) of 401 KAR 35:090.

(57) "Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

(58) "Current plugging and abandonment cost estimates" as used in subsection (1) of this section refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer (see 40 CFR 144.70(f)).

(59) "Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 40 CFR 144.62(a), (b), and (c).

(60) "Current postclosure cost estimate" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:100 or Section 1(1), (2) and (3) of 401 KAR 35:100.

(61) "Debris" means solid material exceeding a 60mm particle size that is intended for disposal and that is: a manufactured object; plant or animal matter; or natural geologic material. However, the following materials are not debris: Any material for which a specific treatment standard is provided in 401 KAR 37:040, namely lead acid batteries, cadmium batteries, and radioactive lead soils; Process residuals such as smelter slag and residues from the treatment of waste, wastewater, sludges, or air emission residues; and Intact containers of hazardous waste that are not ruptured and that retain at least seventy-five (75) percent of their original volume. A mixture of debris that has not been treated to the standards provided by Section 6 of 401 KAR 37:040 and other material is subject to regulation as debris if the mixture is comprised primarily of debris, by volume, based on visual inspection.

(62) "Designated facility" means a hazardous waste treatment, storage, or disposal facility which:

(a) Has received a hazardous waste site or facility permit (or a facility with interim status) in accordance with the requirements of 401 KAR Chapter 38;

(b) Has received a permit from a state authorized in accordance with 40 CFR Part 271, and EPA permit (or a facility with interim status) in accordance with 40 CFR Parts 270 and 124; or

(c) Is regulated under Section 6(3)(b) of 401 KAR 31:010 or 401 KAR Chapter 36, 40 CFR 261.6(c)(2) or 40 CFR Part 266, and that has been designated on the manifest by the generator pursuant to Section 1 of 401 KAR 32:020. If a waste is destined to a hazardous waste site or facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility shall be a facility allowed by the receiving state to accept that waste.

(63) "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in Section 4(1) and (3) of 401 KAR 43:020 and Section 4(1) and (3) of 401 KAR 43:030. A facility at

which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

(64) "Destruction or adverse modification" means an alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

(65) "Dike" means an embankment or ridge of either natural or manmade materials used to prevent the movement of liquids, sludges, solids, or other materials.

(66) "Direct transfer equipment" means any device (including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps) that is used to distribute, meter, or control the flow of hazardous waste between a container (for example, transport vehicle) and a boiler or industrial furnace.

(67) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

(68) "Disposal" shall have the meaning specified in KRS 224.01-010.

(69) "Distillate receiver" means a container or tank used to receive and collect liquid material (condensed) from the overhead condenser of a distillation unit and from which the condensed liquid is pumped to larger storage tanks or other process units.

(70) "Distillation operation" means an operation, either batch or continuous, separating one (1) or more feed stream(s) into two (2) or more exit streams, each exit stream having component concentrations different from those in the feed stream(s). The separation is achieved by the redistribution of the components between the liquid and vapor phase as they approach equilibrium within the distillation unit.

(71) "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(72) "Double block and bleed system" means two (2) block valves connected in series with a bleed valve or line that can vent the line between the two (2) block valves.

(73) "Draft permit" shall have the same meaning as "proposed permit".

(74) "Drip pad" means an engineered structure consisting of a curbed, free-draining base, constructed of nonearthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(75) "Effluent limitations" shall have the same meaning as KRS 224.01-010.

(76) "Elementary neutralization unit" means a device which:

(a) Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in Section 3 of 401 KAR 31:030, or they are listed in 401 KAR 31:040 only for this reason; and

(b) Meets the definition of tank, tank system, container, transport vehicle, or vessel in this section.

(77) "Emergency permit" means a permit issued by the cabinet to temporarily store, treat or dispose of hazardous waste in accordance with the provisions of Section 2 of 401 KAR 38:060, to temporarily manage, process, or dispose of a solid waste in accordance with the provisions of Section 2 of 401 KAR 47:150 or to temporarily store, treat, or dispose of special waste in accordance with the provisions of Section 1 of 401 KAR 45:135.

(78) "Endangered or threatened species" means any species listed as such pursuant to Section 4 of the Endangered Species Act, as amended, 16 USC 1536.

(79) "Engineer" shall have the meaning specified in KRS 322.010. An independent, professional engineer shall be registered in Kentucky pursuant to KRS 322.040 and shall be qualified to engage in waste management engineering practices.

(80) "EPA acknowledgment of consent" means the cable sent to EPA from the U.S. Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

(81) "EPA hazardous waste number" means the number assigned by EPA and the cabinet to each hazardous waste listed in 401 KAR 31:040, and to each characteristic identified in 401 KAR 31:030.

(82) "EPA identification number" means the number assigned by EPA or the cabinet to each generator; transporter; or treatment, storage, or disposal facility.

(83) "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice and which has a channel bottom that is always above the local water table.

(84) "Equipment" means each valve, pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, or flange, and any control devices or systems required by this administrative regulation.

(85) "Equivalent method" means any testing or analytical method, approved jointly by the administrator and the secretary under 401 KAR Chapter 31, or methods in 401 KAR Chapters 47 and 48, approved by the secretary of the cabinet.

(86) "Existing" indicates a boiler or industrial furnace that on or before August 21, 1991 is either in operation burning, or processing hazardous waste or for which construction (including the ancillary facilities to burn or to process the hazardous waste) has commenced.

(87) "Existing component" shall have the same meaning as "existing tank system."

(88) "Existing facility" shall have the same meaning as "existing hazardous waste site or facility".

(89) "Existing hazardous waste site or facility" means a hazardous waste facility which was in operation, or for which continuous construction had commenced, on or before November 19, 1980. A facility has commenced construction if:

(a) The owner or operator had obtained the federal, state and local approvals or permits necessary to begin physical construction; and

(b) Either:

1. A continuous on-site, physical construction program has begun;

or

2. The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the facility to be completed within a reasonable time.

(90) "Existing portion" means that land surface area of an existing hazardous waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

(91) "Existing tank system" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(a) A continuous on-site physical construction or installation program has begun; or

(b) The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the site or installation of the tank system to be completed within a reasonable time.

(92) "External floating roof" means a pontoon or double-deck type floating roof that rests on the surface of a hazardous waste being managed in a tank that has no fixed roof.

(93) "Face amount" means the total amount the insurer is obligated to pay under the policy.

(94) "Facility" means:

(a) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one (1) or more landfills, surface impoundments, or combinations of them).

(b) For the purpose of implementing corrective action under Section 12 of 401 KAR 34:060, all contiguous property under the control of the owner or operator seeking a hazardous waste permit. This definition also applies to facilities implementing corrective action under KRS 224.46-520.

(95) "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation, and the United States Government Printing Office.

(96) "Federal, state, and local approvals or permits necessary to begin physical construction" means permits and approvals required under federal, state, or local hazardous waste control statutes, administrative regulations, or ordinances.

(97) "Final closure" of a hazardous waste site or facility means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under 401 KAR Chapters 34 and 35 are no longer conducted at the facility unless subject to the provisions in Section 5 of 401 KAR 32:030.

(98) "First attempt at repair" means to take rapid action for the purpose of stopping or reducing leakage of organic material to the atmosphere using best practices.

(99) "Fiscal year" means a twelve (12) month period for accounting and other financial purposes.

(100) "Fixed roof" means a rigid cover that is installed in a stationary position so that it does not move with fluctuations in the level of the hazardous waste placed in a tank.

(101) "Flame zone" means the portion of the combustion chamber in a boiler occupied by the flame envelope.

(102) "Floating membrane cover" means a cover consisting of a synthetic flexible membrane material that rests upon and is supported by the hazardous waste being managed in a surface impoundment.

(103) "Floating roof" means a pontoon-type or double-deck type cover that rests upon and is supported by the hazardous waste being managed in a tank, and is equipped with a closure seal or seals to close the space between the cover edge and the tank wall.

(104) "Flood plain" means areas adjoining inland waters which are inundated by the base flood, unless otherwise specified in 401 KAR 30:031 or 401 KAR 47:030, and includes: 100-year floodplain and floodway.

(105) "Floodway" means the channel of the waterway, stream or river and that portion of the adjoining floodplain which provides for passage of the 100-year flood flow without increasing the floodwater depth across the 100-year floodplain by more than one (1) foot.

(106) "Flow indicator" means a device that indicates whether gas flow is present in a vent stream.

(107) "Food chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(108) "Fractionation operation" means a distillation operation or method used to separate a mixture of several volatile components of different boiling points in successive stages, each stage removing from the mixture some proportion of one (1) of the components.

(109) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(110) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.

(111) "Generator" shall have the meaning specified in KRS 224.01-010.

(112) "Governing body" shall have the same meaning as KRS

224.01-010.

(113) "Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.

(114) "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table, and perched water zones below the B-soil horizon, including water circulating through fractures, bedding planes, and solution conduits.

(115) "Halogenated organic compounds" or "HOCs" means those compounds having a carbon-halogen bond that are listed under 401 KAR 37:110.

(116) "Hazardous constituent" shall have the meaning specified in KRS 224.01.010.

(117) "Hazardous waste constituent" means a constituent which caused the cabinet to list the hazardous waste in 401 KAR 31:040, or a constituent listed in Section 5(3) of 401 KAR 31:030.

(118) "Hazardous waste management unit shutdown" means a work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit. An unscheduled work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit for less than twenty-four (24) hours is not a hazardous waste management unit shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping operation are not hazardous waste management unit shutdowns.

(119) "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed. Hazardous waste management units include: aboveground tank; component; existing tank system or existing component; in-ground tank; new tank system or new tank component; on-ground tank; tank system; underground tank; or unfit-for-use tank system.

(120) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

(121) "Hazardous waste site or facility" means any place at which hazardous waste is treated, stored, or disposed of by landfilling, incineration, or any other method. Hazardous waste site or facility includes: boiler; disposal facility; elementary neutralization unit; incinerator; industrial furnace; hazardous waste transfer facility; injection well; landfill; land treatment facility; miscellaneous unit; pile or waste pile; replacement unit; storage facility; sludge dryer; surface impoundment; tank; thermal treatment facility; totally enclosed treatment facility; treatment facility; or wastewater treatment unit.

(122) "Hazardous waste transfer facility" means any transportation related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

(123) "Hazardous waste" shall have the meaning specified in KRS 224.01-010.

(124) "Holocene" means the most recent epoch of the quaternary period, extending from the end of the pleistocene to the present.

(125) "Hot well" means a container for collecting condensate as in a steam condenser serving a vacuum-jet or steam-jet ejector.

(126) "Household waste" means any waste material (including garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

(127) "In existence" shall have the same meaning as "existing."

(128) "In gas service" means that the piece of equipment contains or contacts a hazardous waste stream that is in the gaseous state at operating conditions.

(129) "In heavy liquid service" means that the piece of equipment is not in gas service or in vapor service or in light liquid service.

(130) "In light liquid service" means that the piece of equipment contains or contacts a waste stream where the vapor pressure of one (1) or more of the components in the stream is greater than three-tenths (0.3) kilopascals (kPa) at twenty (20) degrees Centigrade, the total concentration of the pure components having a vapor pressure greater than three-tenths (0.3) kPa at twenty (20) degrees Centigrade is equal to or greater than twenty (20) percent by weight, and the fluid is a liquid at operating conditions.

(131) "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

(132) "In situ sampling systems" means nonextractive samplers or in-line samplers.

(133) "In vacuum service" means that equipment is operating at an internal pressure that is at least five (5) kPa below ambient pressure.

(134) "In vapor service" shall have the same meaning as "in gas service."

(135) "In-ground tank" means a device meeting the definition of "tank" in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(136) "Inactive portion" means that portion of a hazardous waste site or facility which was not operated after November 19, 1980.

(137) "Incinerator" means any enclosed device that:

(a) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(b) Meets the definition of infrared incinerator or plasma arc incinerator.

(138) "Incompatible waste" means a hazardous waste which is unsuitable for placement in a particular device or facility because it may cause corrosion or decay of containment materials, or unsuitable for commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(139) "Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

(140) "Individual generation site" means the contiguous site at or on which one (1) or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one (1) or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

(141) "Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

(a) Cement kilns;

(b) Lime kilns;

(c) Aggregate kilns;

(d) Phosphate kilns;

(e) Coke ovens;

(f) Blast furnaces;

(g) Smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);

(h) Titanium dioxide chloride process oxidation reactors;

(i) Methane reforming furnaces;

(j) Pulp liquor recovery furnaces;

(k) Combustion devices used in the recovery of sulfur values from

spent sulfuric acid;

(l) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least three (3) percent, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of twenty (20) percent as generated; or

(m) Other devices as the cabinet may, after notice and comment, add to this list on the basis of criteria and Section 5 of 401 KAR 30:080.

(142) "Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(143) "Injection well" means a well into which fluids are injected to achieve subsurface emplacement.

(144) "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained hazardous waste or reagents used to treat the hazardous waste.

(145) "Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of a hazardous waste management unit including tank systems.

(146) "Interim status" means the designation of a hazardous waste site or facility which was in existence on November 19, 1980, and has submitted a Part A application under 401 KAR Chapter 38 or under 40 CFR Part 270 and is treated as having a permit until final administrative disposition of the application is made.

(147) "Intermittent stream" means a stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year.

(148) "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

(149) "Internal floating roof" means a floating roof that rests or floats on the surface (but not necessarily in complete contact with it) of a hazardous waste being managed in a tank that has a fixed roof.

(150) "IUC Well" means a underground injection control well as provided in 40 CFR Part 144.

(151) "Karst terrain" means a type of topography where limestone, dolomite or gypsum is present and is characterized by naturally occurring closed topographic depressions or sinkholes, caves, disrupted surface drainage, and well developed underground solution channels formed by dissolution of these rocks by water moving underground.

(152) "Key personnel" shall have the meaning specified in KRS 224.01-010.

(153) "Lab pack" means any large container equal to or smaller than fifty-five (55) gallons that holds many smaller containers of various content tightly secured with packing material.

(154) "Lamp" means the bulb or tube portion of a lighting device specifically designed to produce radiant energy, most often in the ultraviolet (UV), visible, and infra-red (IR) regions of the electromagnetic spectrum. Examples of common lamps include, but is not limited to, incandescent, fluorescent, high pressure sodium, mercury vapor, metal halide, high intensity discharge, and neon lamps.

(155) "Land disposal" shall have the meaning specified in KRS 224.01-010.

(156) "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface. These facilities are disposal facilities if the waste will remain after closure.

(157) "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from

adjacent cells or wastes. Examples of landfill cells are trenches and pits.

(158) "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(159) "Large quantity handler of universal waste" means a universal waste handler who accumulates 5,000 kilograms or more total universal waste (batteries, lamps, pesticides, or thermostats, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total of universal waste is accumulated.

(160) "Leachate" means any liquid including any suspended components in the liquid, that has percolated through or drained from waste.

(161) "Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment system or the presence of a release of hazardous waste, hazardous waste constituents or accumulated liquid in the secondary containment system. Such a system shall employ operational controls (daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment system or the presence of a release of hazardous waste constituents or accumulated liquids into the secondary containment system.

(162) "Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

(163) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(164) "Liner" means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, ground water, or surface water at any time during the active life of the facility.

(165) "Liquid-mounted seal" means a foam or liquid-filled primary seal mounted in contact with the hazardous waste between the tank wall and the floating roof continuously around the circumference of the tank.

(166) "Local government" means the fiscal court of the county, urban-county government, or governing body of an incorporated municipality wherein a hazardous waste landfill or other site or facility for the land disposal of hazardous waste is proposed.

(167) "Major modification" means for hazardous waste sites or facilities, a change in ownership where the cabinet determines that other changes in the permit are necessary as a result of the change in ownership or operational control, area occupied, disposal method, or other significant change in the operation of a waste site or facility (Note: Minor modifications are described in Section 3 of 401 KAR 38:040).

(168) "Malfunction" means any sudden failure of a control device or a hazardous waste management unit or failure of a hazardous waste management unit to operate in a normal or usual manner, so that organic emissions are increased.

(169) "Manifest document number" means the EPA twelve (12) digit identification number assigned to the generator plus a unique, serially increasing, five (5) digit document number assigned to the manifest by the generator for recordkeeping and reporting purposes.

(170) "Manifest" shall have the meaning specified in KRS 224.01-010.

(171) "Maximum organic vapor pressure" means the equilibrium

partial pressure exerted by the hazardous waste contained in a tank determined at the temperature equal to either:

(a) The local maximum monthly average temperature as reported by the National Weather Service when the hazardous waste is stored or treated at ambient temperature; or

(b) The highest calendar-month average temperature of the hazardous waste when the hazardous waste is stored at temperatures above the ambient temperature or when the hazardous waste is stored or treated at temperatures below the ambient temperature.

(172) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

(173) "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of, and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR Part 146, containment building, corrective action management unit, or unit eligible for a research, development, and demonstration permit under Section 6 of 401 KAR 38:060.

(174) "Monitoring well" means a well used to obtain water samples for water quality and quantity analysis and groundwater levels.

(175) "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.

(176) "Movement" means that hazardous waste transported to a facility in an individual vehicle.

(177) "Net working capital" means current assets minus current liabilities.

(178) "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

(179) "New tank component" shall have the same meaning as "new tank system."

(180) "New tank system" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation commenced after July 14, 1986; however, for purposes of Section 4(7)(b) of 401 KAR 34:190 and Section 4(7)(b) of 401 KAR 35:190, a new tank system is one for which construction commenced after July 14, 1986.

(181) "New" means any hazardous waste site or facility that commenced construction after November 19, 1980.

(182) "No detectable organic emissions" means no escape of organics from a device or system to the atmosphere as determined by an instrument reading less than 500 parts per million by volume (ppmv) above the background level at each joint, fitting, and seal when measured in accordance with the requirements of Method 21 in 40 CFR part 60, appendix A, and by no visible openings or defects in the device or system such as rips, tears, or gaps.

(183) "Nonsudden accidental occurrence" means an occurrence that takes place over time and involves continuous or repeated exposure.

(184) "Nonwastewaters" means wastes that do not meet the criteria for wastewaters found in the definition for wastewaters.

(185) "Not detected" means at or below the lower method calibration limit (MCL) in SW-846, Method 8290, Table 1.

(186) "Off-site" means properties noncontiguous to the site.

(187) "On-site" means on the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing, as opposed to going along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access is also considered on-site property.

(188) "Onground tank" means a devise meeting the definition of

tank that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(189) "Open burning" means the combustion of any material or solid waste without:

(a) Control of combustion air to maintain adequate temperature for efficient combustion;

(b) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(c) Control of emission of the gaseous combustion products.

(190) "Open-ended valve or line" means any valve, except pressure relief valves, having one (1) side of the valve seat in contact with process fluid and one (1) side open to the atmosphere, either directly or through open piping.

(191) "Operational plan" means the approved plan of operations filed with the cabinet which describes the method of operation that the permittee will use in the treatment, storage, or disposal of wastes.

(192) "Operator" means any person responsible for overall operation of an on-site or off-site waste facility, including any private contractor conducting operational activities at a federal facility.

(193) "Other site or facility for the land disposal of hazardous waste" means a disposal facility but shall not include a storage facility or a treatment facility.

(194) "Owner" means any person who owns an on-site or off-site waste facility, or any part of a facility.

(195) "Parent corporation" means a corporation which directly owns at least fifty (50) percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

(196) "Part A of the application" or "Part A" means the standard forms or format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:080.

(197) "Part B of the application" or "Part B" means the standard format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:090 to 401 KAR 38:210.

(198) "Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of 401 KAR Chapters 34 and 35 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

(199) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface run-off. The term does not include "intermittent stream" or "ephemeral stream".

(200) "Permit by rule" means authorization allowing certain classes of sites or facilities to manage waste consistent with 401 KAR Chapters 30 to 49, without submission of a registration or permit application to the cabinet. Examples of hazardous waste sites or facilities which are permitted by rule include facilities operating under an interim status permit and facilities identified in Section 1 of 401 KAR 38:060.

(201) "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management administrative regulations. The term permit includes permit-by-rule, registered permit-by-rule, research, development, and demonstration permit, and emergency permit. However, the term permit does not include draft permit or proposed permit.

(202) "Permittee" means any person holding a valid permit issued by the cabinet to manage, treat, store, or dispose of waste.

(203) "Person" shall have the meaning specified in KRS 224.01-010.

(204) "Personnel" or "facility personnel" means all persons who work at or oversee the operations of a waste facility, and whose

actions or failure to act may result in noncompliance with the requirements of the waste management administrative regulations.

(205) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(a) Is a new animal drug under FFDCA section 201(w), or

(b) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or

(c) Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by paragraph (a) or (b) of this subsection.

(206) "Pile" or "waste pile" means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

(207) "Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame and which is not listed as an industrial furnace.

(208) "Point of compliance" means for solid waste site and facilities, groundwater monitoring wells located within 250 feet of the waste boundary as approved by the cabinet.

(209) "Point of waste origination" means as follows:

(a) When the facility owner or operator is the generator of the hazardous waste, the point of waste origination means the point where a solid waste produced by a system, process, or waste management unit is determined to be a hazardous waste as defined in 40 CFR part 261.

(b) When the facility owner and operator are not the generator of the hazardous waste, point of waste origination means the point where the owner or operator accepts delivery or takes possession of the hazardous waste.

(210) "Point of waste treatment" means the point where a hazardous waste exits a waste management unit used to destroy, degrade, or remove organics in the hazardous waste.

(211) "Point source" means any discernible, confined, and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(212) "Pollutant" shall have the same meaning as KRS 224.01-010.

(213) "Polychlorinated biphenyls" or "PCB" means halogenated organic compounds defined in accordance with 40 CFR 761.2 as of July 1989.

(214) "Postclosure care" means the manner in which a facility shall be maintained when it no longer accepts waste for disposal.

(215) "Postclosure monitoring and maintenance" shall have the meaning specified in KRS 224.01-010.

(216) "Postclosure plan" means the plan for postclosure care prepared in accordance with the requirements of Sections 8 to 11 of 401 KAR 34:070 or Sections 8 to 11 of 401 KAR 35:070.

(217) "Pressure release" means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device.

(218) "Primary exporter" means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with Section 1 of 401 KAR 32:020 which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

(219) "Process heater" means a device that transfers heat liberated by burning fuel to fluids contained in tubes, including all fluids except water that are heated to produce steam.

(220) "Process vent" means any open-ended pipe or stack that

is vented to the atmosphere either directly, through a vacuum-producing system, or through a tank (distillate receiver, condenser, bottoms receiver, surge control tank, separator tank, or hot well) associated with hazardous waste distillation fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations.

(221) "Property damage" shall have the meaning given by applicable Kentucky statutes. Property damage does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for property damage.

(222) "Proposed permit" means a document prepared by the cabinet indicating the cabinet's tentative decision to issue or deny, modify, revoke or terminate a permit.

(223) "Publicly owned treatment works" or "POTW" shall have the meaning specified in KRS 224.01-010.

(224) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump.

(225) "Qualified groundwater scientist" means a geologist registered in Kentucky who has received a baccalaureate or postgraduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields to enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

(226) "Receiving country" means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal (except short-term storage incidental to transportation).

(227) "Recharge zone" means an area supplying the water which enters an underground drinking water source.

(228) "Reclaimed" means a material that is processed to recover a usable product, or that is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents.

(229) "Recovered material" shall have the meaning specified in KRS 224.01-010.

(230) "Recyclable materials" means hazardous wastes that are recycled.

(231) "Recycled" means a material that is used, reused, or reclaimed.

(232) "Recycling" shall have the meaning specified in KRS 224.01-010.

(233) "Regional integrated waste treatment and disposal demonstration facility" shall have the meaning specified in KRS 224.01-010.

(234) "Regulated unit" means hazardous waste land disposal sites or facilities, or portions of existing hazardous waste land disposal sites or facilities that continued to receive waste after January 26, 1983.

(235) "Remediation waste" means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under Section 12 of 401 KAR 34:060 and KRS 224.46-520. For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing KRS 224.46-520 for releases beyond the facility boundary.

(236) "Repaired" means that equipment is adjusted, or otherwise altered, to eliminate a leak.

(237) "Replacement unit" means a landfill, surface impoundment, or waste pile unit from which all or substantially all of the waste is removed, and that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or approved corrective action.

(238) "Representative sample" means a sample of a universe or whole (for example, waste pile, lagoon, or groundwater) which can be

expected to exhibit the average properties of the universe or whole.

(239) "Research, development, and demonstration permit" mean a permit issued by the cabinet for a hazardous waste treatment facility that utilizes an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under 401 KAR Chapters 34 through 36.

(240) "Resource recovery" means the recovery of material or energy from waste.

(241) "Run-off" means any rainwater, leachate, or other liquid that drains overland from any part of a facility.

(242) "Run-on" means any rainwater, leachate, or other liquid that drains overland onto any part of a facility.

(243) "Saturated zone" shall have the same meaning as "zone of saturation".

(244) "Schedule of compliance" means a schedule of remedial measures included in a permit or cabinet order, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with KRS Chapter 224 and 401 KAR Chapters 30 to 49.

(245) "Scrap metal" is bits and pieces of metal parts (for example, bars, turnings, rods, sheets, or wire) or metal pieces that may be combined together with bolts or soldering (for example, radiators, scrap automobiles, or railroad boxcars), which when worn or superfluous can be recycled.

(246) "Secretary" shall have the meaning specified in KRS 224.01-010.

(247) "Sensor" means a device that measures a physical quantity or the change in a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

(248) "Separator tank" means a device used for separation of two immiscible liquids.

(249) "Sewage system" shall have the meaning specified in KRS 224.01-010.

(250) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the waste facility or activity.

(251) "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 BTU per pound of sludge treated on a wet-weight basis.

(252) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.

(253) "Small quantity generator" means a generator who generates more than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month.

(254) "Small quantity handler of universal waste" means a universal waste handler who does not accumulate more than 5,000 kilograms of universal waste (batteries, lamps, pesticides, or thermostats, collected collectively) at any time.

(255) "Solid waste management unit" shall mean any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at a facility at which solid wastes have been routinely and systematically released.

(256) "Solvent extraction operation" means an operation or method of separation in which a solid or solution is contacted with a liquid solvent (the two (2) being mutually insoluble) to preferentially dissolve and transfer one (1) or more components into the solvent.

(257) "Sorb" means to either adsorb, absorb, or both.

(258) "Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both.

(259) "Spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which

it was produced without processing.

(260) "Spill" means any accidental spilling, leaking, pumping, pouring, emitting, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes into or on any land or water.

(261) "Start-up" means the setting in operation of a hazardous waste management unit or control device for any purpose.

(262) "State" means any of the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands or Guam but does not include any foreign country.

(263) "Steam stripping operation" means a distillation operation in which vaporization of a volatile constituents of a liquid mixture takes place by the introduction of steam directly into the charge.

(264) "Storage facility" means a facility or part of a facility at which hazardous waste is held for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere. A generator who accumulates his own hazardous wastes in an approved manner for less than ninety (90) days for subsequent transport on site or off site is not operating or maintaining a storage facility.

(265) "Storage of hazardous waste" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed, or stored elsewhere.

(266) "Storage" shall have the meaning specified in KRS 224.01-010.

(267) "Substantial business relationship" means the extent of a business relationship necessary to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" shall arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the cabinet.

(268) "Sudden accidental occurrence" means an occurrence which is not continuous or repeated in nature.

(269) "Sump" means any pit or reservoir that meets the definition of tank, and those troughs and trenches connected to it, that serves to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile administrative regulations, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(270) "Surface impoundment" means a facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(271) "Surge control tank" means a large-sized pipe or storage reservoir sufficient to contain the surging liquid discharge of the process tank to which it is connected.

(272) "Tangible net worth" means the tangible assets that remain after deducting liabilities; these assets would not include intangibles such as goodwill and rights to patents or royalties.

(273) "Tank" means a stationary device designed to contain an accumulation of hazardous waste that is constructed primarily of nonearthen materials (for example, wood, concrete, steel, or plastic) which provide structural support and which does not meet the definition of any other unit.

(274) "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

(275) "Termination" shall have the meaning specified in KRS 224.01-010.

(276) "The full amount of the liability coverage to be provided" means the amount of coverage for sudden and nonsudden occurrence-

es required to be provided by the owner or operator, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(277) "Thermal treatment facility" means a facility or part of a facility which uses elevated temperatures as the primary means to change the chemical, physical or biological character or composition of hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge.

(278) "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge (see also "incinerator" and "open burning").

(279) "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of Section 4(3)(b) of 401 KAR 43:020 or Section 4(3)(b) of 401 KAR 43:030.

(280) "Thin-film evaporation operation" means a distillation operation that employs a heating surface consisting of a large diameter tube that may be either straight or tapered, horizontal or vertical. Liquid is spread on the tube wall by a rotating assembly of blades that maintain a close clearance from the wall or actually ride on the film of liquid on the wall.

(281) "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which acid is neutralized.

(282) "Transit country" means any foreign country, other than a receiving country, through which a hazardous waste is transported.

(283) "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body is a separate transport vehicle.

(284) "Transportation" shall have the meaning specified in KRS 224.01-010.

(285) "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway or water.

(286) "Treatability study" means:

(a) A study in which a hazardous waste is subjected to a treatment process to determine:

1. Whether the waste is amenable to the treatment process;
2. What pretreatment, if any, is required;
3. The optimal process conditions needed to achieve the desired treatment;
4. The efficiency of a treatment process for a specific waste or wastes; or
5. The characteristics and volumes of residuals from a particular treatment process.

(b) For the purpose of 401 KAR 31:010, Section 4(5) and (6), exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies.

(c) A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

(287) "Treatment facility" means a facility or part of a facility using any method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste nonhazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable

for storage, or reduced in volume.

(288) "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

(289) "Treatment" shall have the meaning specified in KRS 224.01-010.

(290) "Underground drinking water source" means:

(a) An aquifer supplying drinking water for human consumption; or

(b) An aquifer in which the groundwater contains less than 10,000 mg/l total dissolved solids.

(291) "Underground injection" means the subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well".)

(292) "Underground tank" means a device meeting the definition of "tank" in this section whose entire surface area is totally below the surface of and covered by the ground.

(293) "Underlying hazardous constituent" means any constituent listed in Section 1 of 401 KAR 37:040, Table - Treatment Standards for Hazardous Wastes, except vanadium and zinc, which can reasonably be expected to be present at the point of generation of the hazardous waste, at a concentration above the constituent-specific treatment standards.

(294) "Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

(295) "Universal waste" means any of the following hazardous wastes that are subject to the universal waste requirements of 401 KAR Chapter 43:

- (a) Batteries as described in Section 2 of 401 KAR 43:010;
- (b) Pesticides as described in Section 3 of 401 KAR 43:010;
- (c) Thermostats as described in Section 4 of 401 KAR 43:010; and

(d) Spent lamps as described in Section 5 of 401 KAR 43:010.

(296) "Universal waste handler":

(a) Means:

1. A generator of universal waste; or
2. The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(b) Does not mean:

1. A person who treats (except under the provisions of Sections 4(1) or (3) of 401 KAR 43:020 or Sections 4(1) or (3) of 401 KAR 43:030), disposes of, or recycles universal waste; or
2. A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

(297) "Universal waste transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.

(298) "Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

(299) "Unsaturated zone" shall have the same meaning as "zone of aeration".

(300) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(301) "Used oil" shall have the same meaning as KRS 224.50-545.

(302) "Used or reused" means a material that is either:

(a) Employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one (1) process used as feedstock in another process). However, a material shall not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

(b) Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

(303) "Vapor incinerator" means any enclosed combustion device that is used for destroying organic compounds and does not extract energy in the form of steam or process heat.

(304) "Vapor recovery system" means that equipment, device, or apparatus capable of collecting vapors and gases discharged from a storage tank, and a vapor processing system capable of affecting such vapors and gases so as to prevent their emission into the atmosphere.

(305) "Vapor-mounted seal" means a foam-filled primary seal mounted continuously around the circumference of the tank so that there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the hazardous waste surface, and the floating roof.

(306) "Vented" means discharged through an opening, typically an open-ended pipe or stack, allowing the passage of a stream of liquids, gases, or fumes into the atmosphere. The passage of liquids, gases, or fumes is caused by mechanical means such as compressors or vacuum-producing systems or by process-related means such as evaporation produced by heating and not caused by tank loading and unloading (work losses) or by natural means such as diurnal temperature changes.

(307) "Vessel" means any watercraft used or capable of being used as a means of transportation on the water.

(308) "Volatile organic concentration" or "VO concentration" means the fraction by weight of organic compounds in a hazardous waste expressed in terms of parts per million (ppmw) as determined by direct measurement using Method 25D or by knowledge of the waste in accordance with the requirements of Section 4 of 401 KAR 35:040.

(309) "Washout" means the carrying away of waste by waters as a result of flooding.

(310) "Waste boundary" means the outermost perimeter of the waste (projected in the horizontal plane) as it would exist at completion of the disposal activity.

(311) "Waste determination" means performing all applicable procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine whether a hazardous waste meets standards specified in 401 KAR Chapter 35. Examples of a waste determination include performing the procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine the average VO concentration of a hazardous waste at the point of waste origination; the average VO concentration of a hazardous waste at the point of waste treatment and comparing the results to the exit concentration limit specified for the process used to treat the hazardous waste; determining the organic reduction efficiency and the organic biodegradation efficiency for a biological process used to treat a hazardous waste and comparing the results to the applicable standards; or the maximum volatile organic vapor pressure for a hazardous waste in a tank and comparing the results to the applicable standards.

(312) "Waste pile" shall have the same meaning as "pile".

(313) "Waste stabilization process" means any physical or chemical process used to either reduce the mobility of hazardous constituents in a hazardous waste or eliminate free liquids as determined by Test Method 9095 (Paint Filter Liquids Test) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,"

EPA Publication No. SW-846, Third Edition, September 1986, as amended by Update I, November 15, 1992 (incorporated by reference-refer to § 260.11 of this chapter). A waste stabilization process includes mixing the hazardous waste with binders or other materials, and curing the resulting hazardous waste and binder mixture. Other synonymous terms used to refer to this process are "waste fixation" or "waste solidification."

(314) "Waste" shall have the meaning specified in KRS 224.01-010.

(315) "Wastewaters" means wastes that contain less than one (1) percent by weight total organic carbon (TOC) and less than one (1) percent by weight total suspended solids (TSS), with the following exceptions:

(a) F001, F002, F003, F004, F005, wastewaters are solvent-water mixtures that contain less than one (1) percent by weight TOC or less than one (1) percent by weight total F001, F002, F003, F004, F005 solvent constituents listed in Section 1 of 401 KAR 37:040 in Table Treatment Standards for Hazardous Waste;

(b) K011, K013, K014 wastewaters contain less than five (5) percent by weight TOC and less than one (1) percent by weight TSS, as generated; and

(c) K103 and K104 wastewaters contain less than four (4) percent by weight TOC and less than one (1) percent by weight TSS.

(316) "Wastewater treatment unit" means a device that:

(a) Is part of a wastewater treatment facility that is subject to administrative regulation under either section 402 or 307(b) of the CWA;

(b) Receives and treats or stores an influent wastewater which is a hazardous waste as defined in 401 KAR 31:010, Section 3; or generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in 401 KAR 31:010, Section 3; or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Section 3 of 401 KAR 31:010; and

(c) Meets the definition of tank or tank system in this administrative regulation.

(317) "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

(318) "Water" or "waters of the Commonwealth" shall have the meaning specified in KRS 224.01-010.

(319) "Well" means any shaft or pit dug or bored into the earth, generally of cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(320) "Wetlands" means land that has a predominance of hydric soils and is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(321) "Zone of aeration" means that region of the soil or rock between the land surface and the nearest saturated zone in which the interstices are occupied partially by air.

(322) "Zone of engineering control" means an area under the control of the owner or operator that upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to waters of the Commonwealth.

(323) "Zone of saturation" means that part of the earth's crust containing groundwater in which all voids, large and small, are filled with liquid.

Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by context, acronyms and abbreviations used in 401 KAR Chapter 37 shall have the meaning as identified in Table 1 of this administrative regulation.

Table 1. Acronyms and Abbreviations.

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Am.	Amended
C	Corrosive waste
CAA	Clean Air Act, as amended
CFR	Code of Federal Regulations
cm	Centimeter
cm ²	Centimeter squared
CO	Carbon monoxide
CO ₂	Carbon dioxide
CWA	Clean Water Act, as amended
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980
DOT	United States Department of Transportation
DRE	Destruction and removal efficiency
E	Explosive waste
eff.	Effective
EPA	United States Environmental Protection Agency
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act
FIA	Federal Insurance Administration
FR	Federal Register
H	Acutely hazardous waste
ha	Hectare
HTMR	High temperature metals recovery
HSWA	Hazardous and Solid Waste Amendments of 1994
I	Ignitable waste
KAR	Kentucky Administrative Regulation
kg	Kilogram
KPDES	Kentucky Pollution Discharge Elimination System
KRS	Kentucky Revised Statute
Ky.R.	Administrative Register of Kentucky
l	Liter
LC	Lethal concentration
LD	Lethal dose
ml	Milliliter
mm	Millimeter
N	Normal
NESHAPS	National Emissions Standards for Hazardous Air Pollutants
NPDES	National Pollutant and Discharge Elimination System
PCB	Polychlorinated biphenyl
pCi/l	Picocuries per liter
PHC	Principal hazardous constituent
Permit POHC	Permitted principal organic hazardous constituent
PM	Particulate matter
POHC	Principal organic hazardous constituent
ppm	parts per million
Trial POHC	Trial burn principal organic hazardous constituent
POTW	Publicly owned treatment works
PSD	Prevention of significant deterioration
psi	Pounds per square inch
psig	Pounds per square inch gauge
R	Reactive waste
RCRA	Resource Conservation and Recovery Act, as amended
SDWA	Safe Drinking Water Act, as amended
SEC	Securities and Exchange Commission
SIC	Standard Industrial Classification Code
SPCC	Spill Prevention, Control, and Countermeasures Plan
T	Toxic waste
UIC	Underground Injection Control
UICP	Underground Injection Control Program
USC	United States Code
U.S. EPA	United States Environmental Protection Agency
USGS	United States Geological Survey

USPS United States Postal Service

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: This regulation does not affect any entities, because it only defines terms used in the chapter. The regulation was promulgated to comply with KRS 13A.222.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

- 3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The cabinet will experience no additional costs or

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savings by promulgating the amendments to this regulation.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: There will be no additional factors affecting costs.

b. Reporting and paperwork requirements: There will be no extra paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on the state and local revenue with the promulgation of this regulation.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No costs are imposed with the promulgation of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: There were no other alternatives that would achieve compliance with KRS 13A.222.

8. Assessment of expected benefits of the administrative regulation: The benefit is having the definitions clearly stated at the beginning of each chapter.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Not applicable since no requirements are imposed.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? (Explain why tiering was or was not used): Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of hazardous waste generated or managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

AGENCY CONTACT: James Hale

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments establish definitions of hazardous waste terms and the clarification of certain definitions. This regulation is necessary to maintain consistency between state and federal programs. In addition, the regulation has been modified to reflect regulation construction specified in KRS 13A.222.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this

administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that manages hazardous waste.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. This administrative regulation establishes definitions for all terms within 401 KAR Chapter 37. These terms are assimilated from existing state and federal regulatory definitions and existing statutory definitions where applicable.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): Because this administrative regulation only establishes definitions for 401 KAR Chapter 37, this administrative regulation will not affect state, county, or local expenditures.

Other Explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (New Administrative Regulation)

401 KAR 38:005. Definitions related to 401 KAR Chapter 38.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 40 CFR 260.10, 270.2

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-505, 224.46-520

NECESSITY AND FUNCTION: This chapter implements provisions of KRS 224.46-520 and 224.46-530 relating to hazardous waste permits. This administrative regulation defines essential terms that are used in this chapter.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or otherwise specifically indicated by context, terms in 401 KAR Chapter 38 shall have the meanings given in this Section.

(1) "100-year floodplain" means any land area which is subject to a one (1) percent or greater chance of flooding in any given year from any source.

(2) "100-year flood" means a flood that has a one (1) percent chance of being equaled or exceeded in any given year.

(3) "Aboveground tank" means a device meeting the definition of "tank" and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

(4) "Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the

standpoint of the insured.

(5) "Accumulated speculatively" means that a material is accumulated before being recycled.

(a) A material is not accumulated speculatively, if the person accumulating it can show:

1. That the material is potentially recyclable and has a feasible means of being recycled; and

2. That - during the calendar year (commencing on January 1) - the amount of material that is recycled, or transferred to a different site for recycling, equals at least seventy-five (75) percent by weight or volume of the amount of that material accumulated at the beginning of the calendar year (including any material accumulated from previous years).

(b) In calculating the percentage of turnover, the seventy-five (75) percent requirement is to be applied to each material of the same type that is recycled in the same way. Materials accumulating in units that would be exempt from administrative regulation under Section 4(3) of 401 KAR 31:010 are not to be included in making the calculation. (Materials that are already defined as wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling.

(6) "Active fault" means a land area which, according to the weight of geological evidence, has a reasonable probability of being affected by movement along a fault to the extent that a waste site or facility would be damaged and thereby pose a threat to human health and the environment.

(7) "Active life" of a facility means the period from the initial receipt of waste at a waste site or facility until the cabinet receives certification of final closure.

(8) "Active portion" means any area of a facility where treatment, storage, or disposal operations are being or have been conducted and which have not been closed. It includes the treated area of a landfarm and the active face of a landfill. Covered, closed, or inactive portions of landfills, building roofs, and roads are excluded unless designated as "active portions" by the cabinet.

(9) "Admixed liner" means a liner made from a mixture of any of a multitude of materials, often asphalt or cement, with widely varying physical and chemical properties. Admixed liners shall be demonstrated to be structurally sound and chemically resistant to the waste placed in it so as to be capable of supporting the waste without cracking or disintegrating or allowing waste or leachate to escape.

(10) "Agricultural waste" means any nonhazardous waste resulting from the production and processing of on-the-farm agricultural products, including manures, prunings and crop residues.

(11) "Air stripping operation" is a desorption operation employed to transfer one (1) or more volatile components from a liquid mixture into a gas (air) either with or without the application of heat to the liquid. Packed towers, spray towers, and bubble-cap, sieve, or valve-type plate towers are among the process configurations used for contacting the air and a liquid.

(12) "Ampule" means a small sealed glass container for one (1) dose of sterile medicine.

(13) "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to hazardous waste management units including tanks between hazardous waste storage and treatment tanks to a point of disposal on site, or to a point of shipment for disposal off site.

(14) "Application" means the form approved by the cabinet for applying for a permit, including any additions, revisions or modifications and any narrative and drawings required by 401 KAR Chapters 30 to 48. The term includes: Part A of the application (Part A); Part B of the application (Part B); notice of intent; administration application; special waste application; or technical application.

(15) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of

groundwater to wells or springs.

(16) "As received waste" refers to the waste as received in the shipment from the generator or sample collector.

(17) "Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

(18) "Attenuation" means any decrease in the maximum concentration or total quantity of an applied chemical or biological constituent in a fixed time or distance traveled resulting from a physical, chemical, or biological reaction or transformation occurring in the zone of aeration or zone of saturation.

(19) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit or part of a facility, such as the plant manager, superintendent, or person of equivalent responsibility.

(20) "Average volatile organic concentration" or "average VO concentration" means the mass-weighted average volatile organic concentration of a hazardous waste as determined in accordance with the requirements of Section 4 of 401 KAR 35:281.

(21) "Base flood" means a flood that has a one (1) percent or greater chance of recurring in any year, or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

(22) "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

(23) "Board" shall have the meaning specified in KRS 224.46-810.

(24) "Bodily injury" shall have the meaning given by applicable Kentucky statutes. Bodily injury does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for bodily injury.

(25) "Boiler" means an enclosed device using control flame combustion and having the following characteristics:

(a)1. The unit shall have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

2. The unit's combustion chamber and primary energy recovery section(s) shall be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section (such as water walls and superheaters) shall be physically formed into one (1) manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream) and fluidized bed combustion units; and

3. While in operation, the unit shall maintain a thermal energy recovery efficiency of at least sixty (60) percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

4. The unit shall export and utilize at least seventy-five (75) percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(b) The unit is one (1) which the cabinet has determined, on a case-by-case basis, to be a boiler, after considering the standards in 401 KAR 30:080.

(26) "Bottoms receiver" means a container or tank used to receive and collect heavier bottoms fractions of the distillation feed stream that remain in the liquid phase.

(27) "Burn" means burning for energy recovery or destruction, or processing for materials recovery or as an ingredient.

(28) "By-product" is a material that is not one (1) of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a coproduct that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

(29) "Cabinet" shall have the meaning specified in KRS 224.01-010.

(30) "Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

(31) "Cation exchange capacity" means the sum of exchangeable cations a soil can absorb expressed in milliequivalents per 100 grams of soil as determined by sampling the soil to the depth of cultivation or solid waste placement, whichever is greater, and analyzing by the summation method for distinctly acid soils or the sodium acetate method for neutral, calcareous, or saline soils.

(32) "Certificate" shall have the meaning specified in KRS 224.46-810.

(33) "Certification" means a statement of professional opinion based upon knowledge and belief.

(34) "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements.

(35) "Closed-vent system" means a system that is not open to the atmosphere and that is composed of piping, connections, and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device.

(36) "Closure plan" means the plan for closure prepared in accordance with the requirements of Section 3 of 401 KAR 34:070 or Section 3 of 401 KAR 35:070.

(37) "Closure" shall have the meaning specified in KRS 224.01-010.

(38) "Component" means either the tank or ancillary equipment of a tank system.

(39) "Condenser" means a heat-transfer device that reduces a thermodynamic fluid from its vapor phase to its liquid phase.

(40) "Conditionally exempt small quantity generator" means:

(a) A generator who generates no more than 100 kilograms of hazardous waste in a calendar month; and

(b) A generator who generates acutely hazardous waste listed in Sections 2, 3, and 4(5) of 401 KAR 31:040 in a calendar month in quantities greater than one (1) kilogram. All quantities of that acutely hazardous waste are subject to administrative regulation under 401 KAR Chapters 32 through 39, and the notification and permitting requirements of KRS 224.01-400, 224.40-310, 224.46-510, 224.46-580, and 224.50-130 to 224.50-413.

(41) "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(42) "Connector" means flanged, screwed, welded, or other joined fitting used to connect two (2) pipelines or a pipeline and a piece of equipment. For the purposes of reporting and recordkeeping, connector means flanged fittings that are not covered by insulation or other materials that prevent location of the fittings.

(43) "Consignee" means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste is sent.

(44) "Constituent" shall have the same meaning as "hazardous waste constituent."

(45) "Container" means any portable device in which hazardous waste is transported, stored, treated, or otherwise handled, and

includes transport vehicles that are containers themselves (for example, tank trucks, tanker-trailers, and rail tank cars), and containers placed on or in a transport vehicle.

(46) "Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of 401 KAR 34:245 or 35:245.

(47) "Contaminate" means introduce a substance that would cause:

(a) The concentration of that substance in the groundwater to exceed the maximum contaminant level specified in 401 KAR 30:031, Sections 5 and 6 of 401 KAR 47:030, or Section 8 of 401 KAR 34:060;

(b) An increase in the concentration of that substance in the groundwater where the existing concentration of that substance exceeds the maximum contaminant level specified in 401 KAR 30:031, 401 KAR 47:030, or Section 8 of 401 KAR 34:060; or

(c) A significant increase above established background levels, for substances that do not have an established maximum contamination level.

(48) "Contamination" means the degradation of naturally occurring water, air, or soil quality either directly or indirectly as a result of human activities.

(49) "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in the event of a fire, explosion, or release of waste or waste constituents into the environment which has the potential for endangering human health and the environment. Financial planning to identify resources for initiation of such action is a part of contingency plan development.

(50) "Continuous recorder" means a data recording device recording an instantaneous data value at least once every 15 minutes.

(51) "Control device shutdown" means the cessation of operation of a control device for any purpose.

(52) "Control device" means an enclosed combustion device, vapor recovery system, or flare. Any device the primary function of which is the recovery or capture of solvents or other organics for use, reuse, or sale (for example, a primary condenser on a solvent recovery unit) is not a control device.

(53) "Corrective action management unit" or "CAMU" means an area within a facility that is designated by the cabinet under 401 KAR 34:287, for the purpose of implementing corrective action requirements under Section 12 of 401 KAR 34:060 and KRS 224.46-520. A CAMU shall only be used for the management of remediation wastes pursuant to implementing such corrective action requirements at the facility.

(54) "Cover" means a device or system which is placed on or over a hazardous waste such that the entire hazardous waste surface area is enclosed and sealed to reduce air emissions to the atmosphere. A cover may have openings such as access hatches, sampling ports, and gauge wells that are necessary for operation, inspection, maintenance, or repair of the unit on which the cover is installed provided that each opening is closed and sealed when not in use. Examples of covers include a fixed roof installed on a tank, a floating membrane cover installed on a surface impoundment, a lid installed on a drum, and an enclosure in which an open container is placed during waste treatment.

(55) "Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(56) "Current closure and postclosure cost estimates" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:090 or Section 1(1), (2) and (3) of 401 KAR 35:090.

(57) "Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly

classifiable as current assets or the creation of other current liabilities.

(58) "Current plugging and abandonment cost estimates" as used in subsection (1) of this section refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer (see 40 CFR 144.70(f)).

(59) "Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 40 CFR 144.62(a), (b), and (c).

(60) "Current postclosure cost estimate" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:100 or Section 1(1), (2) and (3) of 401 KAR 35:100.

(61) "Debris" means solid material exceeding a 60mm particle size that is intended for disposal and that is: a manufactured object; plant or animal matter; or natural geologic material. However, the following materials are not debris: Any material for which a specific treatment standard is provided in 401 KAR 37:040, namely lead acid batteries, cadmium batteries, and radioactive lead soils; Process residuals such as smelter slag and residues from the treatment of waste, wastewater, sludges, or air emission residues; and intact containers of hazardous waste that are not ruptured and that retain at least 75% of their original volume. A mixture of debris that has not been treated to the standards provided by Section 6 of 401 KAR 37:040 and other material is subject to regulation as debris if the mixture is comprised primarily of debris, by volume, based on visual inspection.

(62) "Designated facility" means a hazardous waste treatment, storage, or disposal facility which:

(a) Has received a hazardous waste site or facility permit (or a facility with interim status) in accordance with the requirements of 401 KAR Chapter 38;

(b) Has received a permit from a state authorized in accordance with 40 CFR Part 271, and EPA permit (or a facility with interim status) in accordance with 40 CFR Parts 270 and 124; or

(c) Is regulated under Section 6(3)(b) of 401 KAR 31:010 or 401 KAR Chapter 36, 40 CFR 261.6(c)(2) or 40 CFR Part 266, and that has been designated on the manifest by the generator pursuant to Section 1 of 401 KAR 32:020. If a waste is destined to a hazardous waste site or facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility shall be a facility allowed by the receiving state to accept that waste.

(63) "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in Section 4(1) and (3) of 401 KAR 43:020 and Section 4(1) and (3) of 401 KAR 43:030. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

(64) "Destruction or adverse modification" means an alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

(65) "Dike" means an embankment or ridge of either natural or manmade materials used to prevent the movement of liquids, sludges, solids, or other materials.

(66) "Direct transfer equipment" means any device (including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps) that is used to distribute, meter, or control the flow of hazardous waste between a container (for example, transport vehicle) and a boiler or industrial furnace.

(67) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

(68) "Disposal" shall have the meaning specified in KRS 224.01-010.

(69) "Distillate receiver" means a container or tank used to receive and collect liquid material (condensed) from the overhead condenser of a distillation unit and from which the condensed liquid is pumped to larger storage tanks or other process units.

(70) "Distillation operation" means an operation, either batch or continuous, separating one (1) or more feed stream(s) into two (2) or more exit streams, each exit stream having component concentrations different from those in the feed stream(s). The separation is achieved by the redistribution of the components between the liquid and vapor phase as they approach equilibrium within the distillation unit.

(71) "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(72) "Double block and bleed system" means two (2) block valves connected in series with a bleed valve or line that can vent the line between the two (2) block valves.

(73) "Draft permit" shall have the same meaning as "proposed permit".

(74) "Drip pad" means an engineered structure consisting of a curbed, free-draining base, constructed of nonearthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(75) "Effluent limitations" shall have the same meaning as KRS 224.01-010.

(76) "Elementary neutralization unit" means a device which:

(a) Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in Section 3 of 401 KAR 31:030, or they are listed in 401 KAR 31:040 only for this reason; and

(b) Meets the definition of tank, tank system, container, transport vehicle, or vessel in this section.

(77) "Emergency permit" means a permit issued by the cabinet to temporarily store, treat or dispose of hazardous waste in accordance with the provisions of Section 2 of 401 KAR 38:060, to temporarily manage, process, or dispose of a solid waste in accordance with the provisions of Section 2 of 401 KAR 47:150 or to temporarily store, treat, or dispose of special waste in accordance with the provisions of Section 1 of 401 KAR 45:135.

(78) "Endangered or threatened species" means any species listed as such pursuant to Section 4 of the Endangered Species Act, as amended, 16 USC 1536.

(79) "Engineer" shall have the meaning specified in KRS 322.010. An independent, professional engineer shall be registered in Kentucky pursuant to KRS 322.040 and shall be qualified to engage in waste management engineering practices.

(80) "EPA acknowledgment of consent" means the cable sent to EPA from the U.S. Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

(81) "EPA hazardous waste number" means the number assigned by EPA and the cabinet to each hazardous waste listed in 401 KAR 31:040, and to each characteristic identified in 401 KAR 31:030.

(82) "EPA identification number" means the number assigned by EPA or the cabinet to each generator; transporter; or treatment, storage, or disposal facility.

(83) "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice and which has a channel bottom that is always above the local water table.

(84) "Equipment" means each valve, pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, or flange, and any control devices or systems required by this administrative regulation.

(85) "Equivalent method" means any testing or analytical method, approved jointly by the administrator and the secretary under 401 KAR Chapter 31, or methods in 401 KAR Chapters 47 and 48,

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approved by the secretary of the cabinet.

(86) "Existing" indicates a boiler or industrial furnace that on or before August 21, 1991 is either in operation burning, or processing hazardous waste or for which construction (including the ancillary facilities to burn or to process the hazardous waste) has commenced.

(87) "Existing component" shall have the same meaning as "existing tank system."

(88) "Existing facility" shall have the same meaning as "existing hazardous waste site or facility".

(89) "Existing hazardous waste site or facility" means a hazardous waste facility which was in operation, or for which continuous construction had commenced, on or before November 19, 1980. A facility has commenced construction if:

(a) The owner or operator had obtained the federal, state and local approvals or permits necessary to begin physical construction; and

(b) Either:

1. A continuous on-site, physical construction program has begun; or

2. The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the facility to be completed within a reasonable time.

(90) "Existing portion" means that land surface area of an existing hazardous waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

(91) "Existing tank system" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(a) A continuous on-site physical construction or installation program has begun; or

(b) The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the site or installation of the tank system to be completed within a reasonable time.

(92) "External floating roof" means a pontoon or double-deck type floating roof that rests on the surface of a hazardous waste being managed in a tank that has no fixed roof.

(93) "Face amount" means the total amount the insurer is obligated to pay under the policy.

(94) "Facility" means:

(a) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments; or combinations of them).

(b) For the purpose of implementing corrective action under Section 12 of 401 KAR 34:060, all contiguous property under the control of the owner or operator seeking a hazardous waste permit. This definition also applies to facilities implementing corrective action under KRS 224.46-520.

(95) "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation, and the United States Government Printing Office.

(96) "Federal, state, and local approvals or permits necessary to begin physical construction" means permits and approvals required under federal, state, or local hazardous waste control statutes, administrative regulations, or ordinances.

(97) "Final closure" of a hazardous waste site or facility means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazard-

ous waste management activities under 401 KAR Chapters 34 and 35 are no longer conducted at the facility unless subject to the provisions in Section 5 of 401 KAR 32:030.

(98) "First attempt at repair" means to take rapid action for the purpose of stopping or reducing leakage of organic material to the atmosphere using best practices.

(99) "Fiscal year" means a twelve (12) month period for accounting and other financial purposes.

(100) "Fixed roof" means a rigid cover that is installed in a stationary position so that it does not move with fluctuations in the level of the hazardous waste placed in a tank.

(101) "Flame zone" means the portion of the combustion chamber in a boiler occupied by the flame envelope.

(102) "Floating membrane cover" means a cover consisting of a synthetic flexible membrane material that rests upon and is supported by the hazardous waste being managed in a surface impoundment.

(103) "Floating roof" means a pontoon-type or double-deck type cover that rests upon and is supported by the hazardous waste being managed in a tank, and is equipped with a closure seal or seals to close the space between the cover edge and the tank wall.

(104) "Flood plain" means areas adjoining inland waters which are inundated by the base flood, unless otherwise specified in 401 KAR 30:031 or 401 KAR 47:030, and includes: 100-year floodplain and floodway.

(105) "Floodway" means the channel of the waterway, stream or river and that portion of the adjoining floodplain which provides for passage of the 100-year flood flow without increasing the floodwater depth across the 100-year floodplain by more than one (1) foot.

(106) "Flow indicator" means a device that indicates whether gas flow is present in a vent stream.

(107) "Food chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(108) "Fractionation operation" means a distillation operation or method used to separate a mixture of several volatile components of different boiling points in successive stages, each stage removing from the mixture some proportion of one of the components.

(109) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(110) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.

(111) "Generator" shall have the meaning specified in KRS 224.01-010.

(112) "Governing body" shall have the same meaning as KRS 224.01-010.

(113) "Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.

(114) "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table, and perched water zones below the B-soil horizon, including water circulating through fractures, bedding planes, and solution conduits.

(115) "Halogenated organic compounds" or "HOCs" means those compounds having a carbon-halogen bond that are listed under 401 KAR 37:110.

(116) "Hazardous constituent" shall have the meaning specified in KRS 224.01.010.

(117) "Hazardous waste constituent" means a constituent which caused the cabinet to list the hazardous waste in 401 KAR 31:040, or a constituent listed in Section 5(3) of 401 KAR 31:030.

(118) "Hazardous waste management unit shutdown" means a work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit. An unscheduled work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit for less than

twenty-four (24) hours is not a hazardous waste management unit shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping operation are not hazardous waste management unit shutdowns.

(119) "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed. Hazardous waste management units include: aboveground tank; component; existing tank system or existing component; in-ground tank; new tank system or new tank component; on-ground tank; tank system; underground tank; or unfit-for-use tank system.

(120) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

(121) "Hazardous waste site or facility" means any place at which hazardous waste is treated, stored, or disposed of by landfilling, incineration, or any other method. Hazardous waste site or facility includes: boiler; disposal facility; elementary neutralization unit; incinerator; industrial furnace; hazardous waste transfer facility; injection well; landfill; land treatment facility; miscellaneous unit; pile or waste pile; replacement unit; storage facility; sludge dryer; surface impoundment; tank; thermal treatment facility; totally enclosed treatment facility; treatment facility; or wastewater treatment unit.

(122) "Hazardous waste transfer facility" means any transportation related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

(123) "Hazardous waste" shall have the meaning specified in KRS 224.01-010.

(124) "Holocene" means the most recent epoch of the quaternary period, extending from the end of the pleistocene to the present.

(125) "Hot well" means a container for collecting condensate as in a steam condenser serving a vacuum-jet or steam-jet ejector.

(126) "Household waste" means any waste material (including garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

(127) "In existence" shall have the same meaning as "existing."

(128) "In gas service" means that the piece of equipment contains or contacts a hazardous waste stream that is in the gaseous state at operating conditions.

(129) "In heavy liquid service" means that the piece of equipment is not in gas service or in vapor service or in light liquid service.

(130) "In light liquid service" means that the piece of equipment contains or contacts a waste stream where the vapor pressure of one (1) or more of the components in the stream is greater than three-tenths (0.3) kilopascals (kPa) at twenty (20) degrees Centigrade, the total concentration of the pure components having a vapor pressure greater than three-tenths (0.3) kPa at twenty (20) degrees Centigrade is equal to or greater than twenty (20) percent by weight, and the fluid is a liquid at operating conditions.

(131) "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

(132) "In situ sampling systems" means nonextractive samplers or in-line samplers.

(133) "In vacuum service" means that equipment is operating at an internal pressure that is at least 5 kPa below ambient pressure.

(134) "In vapor service" shall have the same meaning as "in gas service."

(135) "In-ground tank" means a device meeting the definition of

"tank" in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(136) "Inactive portion" means that portion of a hazardous waste site or facility which was not operated after November 19, 1980.

(137) "Incinerator" means any enclosed device that:

(a) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(b) Meets the definition of infrared incinerator or plasma arc incinerator.

(138) "Incompatible waste" means a hazardous waste which is unsuitable for placement in a particular device or facility because it may cause corrosion or decay of containment materials, or unsuitable for commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(139) "Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

(140) "Individual generation site" means the contiguous site at or on which one (1) or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one (1) or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

(141) "Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

(a) Cement kilns;

(b) Lime kilns;

(c) Aggregate kilns;

(d) Phosphate kilns;

(e) Coke ovens;

(f) Blast furnaces;

(g) Smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);

(h) Titanium dioxide chloride process oxidation reactors;

(i) Methane reforming furnaces;

(j) Pulping liquor recovery furnaces;

(k) Combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(l) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least three (3) percent, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of twenty (20) percent as generated; or

(m) Other devices as the cabinet may, after notice and comment, add to this list on the basis of criteria and Section 5 of 401 KAR 30:080.

(142) "Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(143) "Injection well" means a well into which fluids are injected to achieve subsurface emplacement.

(144) "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained hazardous waste or reagents used to treat the hazardous waste.

(145) "Installation inspector" means a person who, by reason of

his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of a hazardous waste management unit including tank systems.

(146) "Interim status" means the designation of a hazardous waste site or facility which was in existence on November 19, 1980, and has submitted a Part A application under 401 KAR Chapter 38 or under 40 CFR Part 270 and is treated as having a permit until final administrative disposition of the application is made.

(147) "Intermittent stream" means a stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year.

(148) "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

(149) "Internal floating roof" means a floating roof that rests or floats on the surface (but not necessarily in complete contact with it) of a hazardous waste being managed in a tank that has a fixed roof.

(150) "IUC well" means a underground injection control well as provided in 40 CFR Part 144.

(151) "Karst terrain" means a type of topography where limestone, dolomite or gypsum is present and is characterized by naturally occurring closed topographic depressions or sinkholes, caves, disrupted surface drainage, and well developed underground solution channels formed by dissolution of these rocks by water moving underground.

(152) "Key personnel" shall have the meaning specified in KRS 224.01-010.

(153) "Lab pack" means any large container equal to or smaller than fifty-five (55) gallons that holds many smaller containers of various content tightly secured with packing material.

(154) "Lamp" means the bulb or tube portion of a lighting device specifically designed to produce radiant energy, most often in the ultraviolet (UV), visible, and infra-red (IR) regions of the electromagnetic spectrum. Examples of common lamps include, but is not limited to, incandescent, fluorescent, high pressure sodium, mercury vapor, metal halide, high intensity discharge, and neon lamps.

(155) "Land disposal" shall have the meaning specified in KRS 224.01-010.

(156) "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface. These facilities are disposal facilities if the waste will remain after closure.

(157) "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

(158) "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(159) "Large quantity handler of universal waste" means a universal waste handler who accumulates 5,000 kilograms or more total universal waste (batteries, lamps, pesticides, or thermostats, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total of universal waste is accumulated.

(160) "Leachate" means any liquid including any suspended components in the liquid, that has percolated through or drained from waste.

(161) "Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment system or the presence of a release of hazardous waste, hazardous waste constituents or accumulated liquid in the secondary containment system. Such a system shall employ operational controls (daily visual inspections for releases into the secondary containment system

of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment system or the presence of a release of hazardous waste constituents or accumulated liquids into the secondary containment system.

(162) "Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

(163) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(164) "Liner" means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, ground water, or surface water at any time during the active life of the facility.

(165) "Liquid-mounted seal" means a foam or liquid-filled primary seal mounted in contact with the hazardous waste between the tank wall and the floating roof continuously around the circumference of the tank.

(166) "Local government" means the fiscal court of the county, urban-county government, or governing body of an incorporated municipality wherein a hazardous waste landfill or other site or facility for the land disposal of hazardous waste is proposed.

(167) "Major modification" means for hazardous waste sites or facilities, a change in ownership where the cabinet determines that other changes in the permit are necessary as a result of the change in ownership or operational control, area occupied, disposal method, or other significant change in the operation of a waste site or facility (Note: Minor modifications are described in Section 3 of 401 KAR 38:040).

(168) "Malfunction" means any sudden failure of a control device or a hazardous waste management unit or failure of a hazardous waste management unit to operate in a normal or usual manner, so that organic emissions are increased.

(169) "Manifest document number" means the EPA twelve (12) digit identification number assigned to the generator plus a unique, serially increasing, five (5) digit document number assigned to the manifest by the generator for recordkeeping and reporting purposes.

(170) "Manifest" shall have the meaning specified in KRS 224.01-010.

(171) "Maximum organic vapor pressure" means the equilibrium partial pressure exerted by the hazardous waste contained in a tank determined at the temperature equal to either:

(a) The local maximum monthly average temperature as reported by the National Weather Service when the hazardous waste is stored or treated at ambient temperature; or

(b) The highest calendar-month average temperature of the hazardous waste when the hazardous waste is stored at temperatures above the ambient temperature or when the hazardous waste is stored or treated at temperatures below the ambient temperature.

(172) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

(173) "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of, and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR Part 146, containment building, corrective action management unit, or unit eligible for a research, development, and demonstration permit under Section 6 of 401 KAR 38:060.

(174) "Monitoring well" means a well used to obtain water samples for water quality and quantity analysis and groundwater

levels.

(175) "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.

(176) "Movement" means that hazardous waste transported to a facility in an individual vehicle.

(177) "Net working capital" means current assets minus current liabilities.

(178) "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

(179) "New tank component" shall have the same meaning as "new tank system."

(180) "New tank system" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation commenced after July 14, 1986; however, for purposes of Section 4(7)(b) of 401 KAR 34:190 and Section 4(7)(b) of 401 KAR 35:190, a new tank system is one for which construction commenced after July 14, 1986.

(181) "New" means any hazardous waste site or facility that commenced construction after November 19, 1980.

(182) "No detectable organic emissions" means no escape of organics from a device or system to the atmosphere as determined by an instrument reading less than 500 parts per million by volume (ppmv) above the background level at each joint, fitting, and seal when measured in accordance with the requirements of Method 21 in 40 CFR part 60, appendix A, and by no visible openings or defects in the device or system such as rips, tears, or gaps.

(183) "Nonsudden accidental occurrence" means an occurrence that takes place over time and involves continuous or repeated exposure.

(184) "Nonwastewaters" means wastes that do not meet the criteria for wastewaters found in the definition for wastewaters.

(185) "Not detected" means at or below the lower method calibration limit (MCL) in SW-846, Method 8290, Table 1.

(186) "Off-site" means properties noncontiguous to the site.

(187) "On-site" means on the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing, as opposed to going along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access is also considered on-site property.

(188) "Onground tank" means a device meeting the definition of tank that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(189) "Open burning" means the combustion of any material or solid waste without:

(a) Control of combustion air to maintain adequate temperature for efficient combustion;

(b) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(c) Control of emission of the gaseous combustion products.

(190) "Open-ended valve or line" means any valve, except pressure relief valves, having one (1) side of the valve seat in contact with process fluid and one (1) side open to the atmosphere, either directly or through open piping.

(191) "Operational plan" means the approved plan of operations filed with the cabinet which describes the method of operation that the permittee will use in the treatment, storage, or disposal of wastes.

(192) "Operator" means any person responsible for overall operation of an on-site or off-site waste facility, including any private contractor conducting operational activities at a federal facility.

(193) "Other site or facility for the land disposal of hazardous waste" means a disposal facility but shall not include a storage facility

or a treatment facility.

(194) "Owner" means any person who owns an on-site or off-site waste facility, or any part of a facility.

(195) "Parent corporation" means a corporation which directly owns at least fifty (50) percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

(196) "Part A of the application" or "Part A" means the standard forms or format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:080.

(197) "Part B of the application" or "Part B" means the standard format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:090 to 401 KAR 38:210.

(198) "Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of 401 KAR Chapters 34 and 35 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

(199) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface run-off. The term does not include "intermittent stream" or "ephemeral stream".

(200) "Permit by rule" means authorization allowing certain classes of sites or facilities to manage waste consistent with 401 KAR Chapters 30 to 49, without submission of a registration or permit application to the cabinet. Examples of hazardous waste sites or facilities which are permitted by rule include facilities operating under an interim status permit and facilities identified in Section 1 of 401 KAR 38:060.

(201) "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management administrative regulations. The term permit includes permit-by-rule, registered permit-by-rule, research, development, and demonstration permit, and emergency permit. However, the term permit does not include draft permit or proposed permit.

(202) "Permittee" means any person holding a valid permit issued by the cabinet to manage, treat, store, or dispose of waste.

(203) "Person" shall have the meaning specified in KRS 224.01-010.

(204) "Personnel" or "facility personnel" means all persons who work at or oversee the operations of a waste facility, and whose actions or failure to act may result in noncompliance with the requirements of the waste management administrative regulations.

(205) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(a) Is a new animal drug under FFDCA section 201(w), or

(b) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or

(c) Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by paragraph (a) or (b) of this subsection.

(206) "Pile" or "waste pile" means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

(207) "Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame and which is not listed as an industrial furnace.

(208) "Point of compliance" means for solid waste site and facilities, groundwater monitoring wells located within 250 feet of the waste boundary as approved by the cabinet.

(209) "Point of waste origination" means as follows:

(a) When the facility owner or operator is the generator of the hazardous waste, the point of waste origination means the point where a solid waste produced by a system, process, or waste management unit is determined to be a hazardous waste as defined in 40 CFR part 261.

(b) When the facility owner and operator are not the generator of the hazardous waste, point of waste origination means the point where the owner or operator accepts delivery or takes possession of the hazardous waste.

(210) "Point of waste treatment" means the point where a hazardous waste exits a waste management unit used to destroy, degrade, or remove organics in the hazardous waste.

(211) "Point source" means any discernible, confined, and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(212) "Pollutant" shall have the same meaning as KRS 224.01-010.

(213) "Polychlorinated biphenyls" or "PCB" means halogenated organic compounds defined in accordance with 40 CFR 761.2 as of July 1989.

(214) "Postclosure care" means the manner in which a facility shall be maintained when it no longer accepts waste for disposal.

(215) "Postclosure monitoring and maintenance" shall have the meaning specified in KRS 224.01-010.

(216) "Postclosure plan" means the plan for postclosure care prepared in accordance with the requirements of Sections 8 to 11 of 401 KAR 34:070 or Sections 8 to 11 of 401 KAR 35:070.

(217) "Pressure release" means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device.

(218) "Primary exporter" means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with Section 1 of 401 KAR 32:020 which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

(219) "Process heater" means a device that transfers heat liberated by burning fuel to fluids contained in tubes, including all fluids except water that are heated to produce steam.

(220) "Process vent" means any open-ended pipe or stack that is vented to the atmosphere either directly, through a vacuum-producing system, or through a tank (distillate receiver, condenser, bottoms receiver, surge control tank, separator tank, or hot well) associated with hazardous waste distillation fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations.

(221) "Property damage" shall have the meaning given by applicable Kentucky statutes. Property damage does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for property damage.

(222) "Proposed permit" means a document prepared by the cabinet indicating the cabinet's tentative decision to issue or deny, modify, revoke or terminate a permit.

(223) "Publicly owned treatment works" or "POTW" shall have the meaning specified in KRS 224.01-010.

(224) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump.

(225) "Qualified groundwater scientist" means a geologist registered in Kentucky who has received a baccalaureate or postgraduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields to enable that individual to make sound professional judgments

regarding groundwater monitoring and contaminant fate and transport.

(226) "Receiving country" means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal (except short-term storage incidental to transportation).

(227) "Recharge zone" means an area supplying the water which enters an underground drinking water source.

(228) "Reclaimed" means a material that is processed to recover a usable product, or that is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents.

(229) "Recovered material" shall have the meaning specified in KRS 224.01-010.

(230) "Recyclable materials" means hazardous wastes that are recycled.

(231) "Recycled" means a material that is used, reused, or reclaimed.

(232) "Recycling" shall have the meaning specified in KRS 224.01-010.

(233) "Regional integrated waste treatment and disposal demonstration facility" shall have the meaning specified in KRS 224.01-010.

(234) "Regulated unit" means hazardous waste land disposal sites or facilities, or portions of existing hazardous waste land disposal sites or facilities that continued to receive waste after January 26, 1983.

(235) "Remediation waste" means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under Section 12 of 401 KAR 34:060 and KRS 224.46-520. For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing KRS 224.46-520 for releases beyond the facility boundary.

(236) "Repaired" means that equipment is adjusted, or otherwise altered, to eliminate a leak.

(237) "Replacement unit" means a landfill, surface impoundment, or waste pile unit from which all or substantially all of the waste is removed, and that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or approved corrective action.

(238) "Representative sample" means a sample of a universe or whole (for example, waste pile, lagoon, or groundwater) which can be expected to exhibit the average properties of the universe or whole.

(239) "Research, development, and demonstration permit" means a permit issued by the cabinet for a hazardous waste treatment facility that utilizes an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under 401 KAR Chapters 34 through 36.

(240) "Resource recovery" means the recovery of material or energy from waste.

(241) "Run-off" means any rainwater, leachate, or other liquid that drains overland from any part of a facility.

(242) "Run-on" means any rainwater, leachate, or other liquid that drains overland onto any part of a facility.

(243) "Saturated zone" shall have the same meaning as "zone of saturation".

(244) "Schedule of compliance" means a schedule of remedial measures included in a permit or cabinet order, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with KRS Chapter 224 and 401 KAR Chapters 30 to 49.

(245) "Scrap metal" is bits and pieces of metal parts (for example, bars, turnings, rods, sheets, or wire) or metal pieces that may be combined together with bolts or soldering (for example, radiators,

scrap automobiles, or railroad boxcars), which when worn or superfluous can be recycled.

(246) "Secretary" shall have the meaning specified in KRS 224.01-010.

(247) "Sensor" means a device that measures a physical quantity or the change in a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

(248) "Separator tank" means a device used for separation of two immiscible liquids.

(249) "Sewage system" shall have the meaning specified in KRS 224.01-010.

(250) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the waste facility or activity.

(251) "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 BTU per pound of sludge treated on a wet-weight basis.

(252) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.

(253) "Small quantity generator" means a generator who generates more than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month.

(254) "Small quantity handler of universal waste" means a universal waste handler who does not accumulate more than 5,000 kilograms of universal waste (batteries, lamps, pesticides, or thermostats, collected collectively) at any time.

(255) "Solid waste management unit" shall mean any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at a facility at which solid wastes have been routinely and systematically released.

(256) "Solvent extraction operation" means an operation or method of separation in which a solid or solution is contacted with a liquid solvent (the two (2) being mutually insoluble) to preferentially dissolve and transfer one (1) or more components into the solvent.

(257) "Sorb" means to either adsorb, absorb, or both.

(258) "Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both.

(259) "Spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

(260) "Spill" means any accidental spilling, leaking, pumping, pouring, emitting, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes into or on any land or water.

(261) "Start-up" means the setting in operation of a hazardous waste management unit or control device for any purpose.

(262) "State" means any of the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands or Guam but does not include any foreign country.

(263) "Steam stripping operation" means a distillation operation in which vaporization of a volatile constituents of a liquid mixture takes place by the introduction of steam directly into the charge.

(264) "Storage facility" means a facility or part of a facility at which hazardous waste is held for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere. A generator who accumulates his own hazardous wastes in an approved manner for less than ninety (90) days for subsequent transport on site or off site is not operating or maintaining a storage facility.

(265) "Storage of hazardous waste" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed, or stored elsewhere.

(266) "Storage" shall have the meaning specified in KRS 224.01-010.

(267) "Substantial business relationship" means the extent of a business relationship necessary to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" shall arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the cabinet.

(268) "Sudden accidental occurrence" means an occurrence which is not continuous or repeated in nature.

(269) "Sump" means any pit or reservoir that meets the definition of tank, and those troughs and trenches connected to it, that serves to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile administrative regulations, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(270) "Surface impoundment" means a facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(271) "Surge control tank" means a large-sized pipe or storage reservoir sufficient to contain the surging liquid discharge of the process tank to which it is connected.

(272) "Tangible net worth" means the tangible assets that remain after deducting liabilities; these assets would not include intangibles such as goodwill and rights to patents or royalties.

(273) "Tank" means a stationary device designed to contain an accumulation of hazardous waste that is constructed primarily of nonearthen materials (for example, wood, concrete, steel, or plastic) which provide structural support and which does not meet the definition of any other unit.

(274) "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

(275) "Termination" shall have the meaning specified in KRS 224.01-010.

(276) "The full amount of the liability coverage to be provided" means the amount of coverage for sudden and nonsudden occurrences required to be provided by the owner or operator, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(277) "Thermal treatment facility" means a facility or part of a facility which uses elevated temperatures as the primary means to change the chemical, physical or biological character or composition of hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge.

(278) "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge (see also "incinerator" and "open burning").

(279) "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of Section 4(3)(b) of 401 KAR 43:020 or Section 4(3)(b) of 401 KAR 43:030.

(280) "Thin-film evaporation operation" means a distillation operation that employs a heating surface consisting of a large diameter tube that may be either straight or tapered, horizontal or vertical. Liquid is spread on the tube wall by a rotating assembly of blades that maintain a close clearance from the wall or actually ride on the film of liquid on the wall.

(281) "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which acid is neutralized.

(282) "Transit country" means any foreign country, other than a receiving country, through which a hazardous waste is transported.

(283) "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body is a separate transport vehicle.

(284) "Transportation" shall have the meaning specified in KRS 224.01-010.

(285) "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway or water.

(286) "Treatability study" means:

(a) A study in which a hazardous waste is subjected to a treatment process to determine:

1. Whether the waste is amenable to the treatment process;
2. What pretreatment, if any, is required;
3. The optimal process conditions needed to achieve the desired treatment;
4. The efficiency of a treatment process for a specific waste or wastes; or
5. The characteristics and volumes of residuals from a particular treatment process.

(b) For the purpose of 401 KAR 31:010, Section 4(5) and (6), exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies.

(c) A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

(287) "Treatment facility" means a facility or part of a facility using any method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste nonhazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

(288) "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

(289) "Treatment" shall have the meaning specified in KRS 224.01-010.

(290) "Underground drinking water source" means:

- (a) An aquifer supplying drinking water for human consumption; or
- (b) An aquifer in which the groundwater contains less than 10,000 mg/l total dissolved solids.

(291) "Underground injection" means the subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well".)

(292) "Underground tank" means a device meeting the definition of "tank" in this section whose entire surface area is totally below the surface of and covered by the ground.

(293) "Underlying hazardous constituent" means any constituent listed in Section 1 of 401 KAR 37:040, Table - Treatment Standards for Hazardous Wastes, except vanadium and zinc, which can reasonably be expected to be present at the point of generation of the hazardous waste, at a concentration above the constituent-specific

treatment standards.

(294) "Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

(295) "Universal waste" means any of the following hazardous wastes that are subject to the universal waste requirements of 401 KAR Chapter 43:

- (a) Batteries as described in Section 2 of 401 KAR 43:010;
- (b) Pesticides as described in Section 3 of 401 KAR 43:010;
- (c) Thermostats as described in Section 4 of 401 KAR 43:010; and
- (d) Spent lamps as described in Section 5 of 401 KAR 43:010.

(296) "Universal waste handler":

(a) Means:

1. A generator of universal waste; or
2. The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(b) Does not mean:

1. A person who treats (except under the provisions of Sections 4(1) or (3) of 401 KAR 43:020 or Sections 4(1) or (3) of 401 KAR 43:030), disposes of, or recycles universal waste; or
2. A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

(297) "Universal waste transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten (10) days or less.

(298) "Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

(299) "Unsaturated zone" shall have the same meaning as "aone of aeration".

(300) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(301) "Used oil" shall have the same meaning as KRS 224.50-545.

(302) "Used or reused" means a material that is either:

- (a) Employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one (1) process used as feedstock in another process). However, a material shall not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

(b) Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

(303) "Vapor incinerator" means any enclosed combustion device that is used for destroying organic compounds and does not extract energy in the form of steam or process heat.

(304) "Vapor recovery system" means that equipment, device, or apparatus capable of collecting vapors and gases discharged from a storage tank, and a vapor processing system capable of affecting such vapors and gases so as to prevent their emission into the atmosphere.

(305) "Vapor-mounted seal" means a foam-filled primary seal mounted continuously around the circumference of the tank so that there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank

wall, the hazardous waste surface, and the floating roof.

(306) "Vented" means discharged through an opening, typically an open-ended pipe or stack, allowing the passage of a stream of liquids, gases, or fumes into the atmosphere. The passage of liquids, gases, or fumes is caused by mechanical means such as compressors or vacuum-producing systems or by process-related means such as evaporation produced by heating and not caused by tank loading and unloading (work losses) or by natural means such as diurnal temperature changes.

(307) "Vessel" means any watercraft used or capable of being used as a means of transportation on the water.

(308) "Volatile organic concentration" or "VO concentration" means the fraction by weight of organic compounds in a hazardous waste expressed in terms of parts per million (ppmw) as determined by direct measurement using Method 25D or by knowledge of the waste in accordance with the requirements of Section 4 of 401 KAR 35:040.

(309) "Washout" means the carrying away of waste by waters as a result of flooding.

(310) "Waste boundary" means the outermost perimeter of the waste (projected in the horizontal plane) as it would exist at completion of the disposal activity.

(311) "Waste determination" means performing all applicable procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine whether a hazardous waste meets standards specified in 401 KAR Chapter 35. Examples of a waste determination include performing the procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine the average VO concentration of a hazardous waste at the point of waste origination; the average VO concentration of a hazardous waste at the point of waste treatment and comparing the results to the exit concentration limit specified for the process used to treat the hazardous waste; determining the organic reduction efficiency and the organic biodegradation efficiency for a biological process used to treat a hazardous waste and comparing the results to the applicable standards; or the maximum volatile organic vapor pressure for a hazardous waste in a tank and comparing the results to the applicable standards.

(312) "Waste pile" shall have the same meaning as "pile".

(313) "Waste stabilization process" means any physical or chemical process used to either reduce the mobility of hazardous constituents in a hazardous waste or eliminate free liquids as determined by Test Method 9095 (Paint Filter Liquids Test) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW-846, Third Edition, September 1986, as amended by Update I, November 15, 1992 (incorporated by reference-refer to § 260.11 of this chapter). A waste stabilization process includes mixing the hazardous waste with binders or other materials, and curing the resulting hazardous waste and binder mixture. Other synonymous terms used to refer to this process are "waste fixation" or "waste solidification."

(314) "Waste" shall have the meaning specified in KRS 224.01-010.

(315) "Wastewaters" means wastes that contain less than one (1) percent by weight total organic carbon (TOC) and less than one (1) percent by weight total suspended solids (TSS), with the following exceptions:

(a) F001, F002, F003, F004, F005, wastewaters are solvent-water mixtures that contain less than one (1) percent by weight TOC or less than one (1) percent by weight total F001, F002, F003, F004, F005 solvent constituents listed in Section 1 of 401 KAR 37:040 in Table Treatment Standards for Hazardous Waste;

(b) K011, K013, K014 wastewaters contain less than five (5) percent by weight TOC and less than one (1) percent by weight TSS, as generated; and

(c) K103 and K104 wastewaters contain less than four (4) percent by weight TOC and less than one (1) percent by weight TSS.

(316) "Wastewater treatment unit" means a device that:

(a) Is part of a wastewater treatment facility that is subject to administrative regulation under either section 402 or 307(b) of the CWA;

(b) Receives and treats or stores an influent wastewater which is a hazardous waste as defined in 401 KAR 31:010, Section 3; or generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in 401 KAR 31:010, Section 3; or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Section 3 of 401 KAR 31:010; and

(c) Meets the definition of tank or tank system in this administrative regulation.

(317) "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

(318) "Water" or "waters of the Commonwealth" shall have the meaning specified in KRS 224.01-010.

(319) "Well" means any shaft or pit dug or bored into the earth, generally of cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(320) "Wetlands" means land that has a predominance of hydric soils and is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(321) "Zone of aeration" means that region of the soil or rock between the land surface and the nearest saturated zone in which the interstices are occupied partially by air.

(322) "Zone of engineering control" means an area under the control of the owner or operator that upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to waters of the Commonwealth.

(323) "Zone of saturation" means that part of the earth's crust containing groundwater in which all voids, large and small, are filled with liquid.

Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by context, acronyms and abbreviations used in 401 KAR Chapter 38 shall have the meaning as identified in Table 1 of this administrative regulation.

Table 1. Acronyms and Abbreviations.

Am.	Amended
C	Corrosive waste
CAA	Clean Air Act, as amended
CFR	Code of Federal Regulations
cm	Centimeter
cm ²	Centimeter squared
CO	Carbon monoxide
CO ₂	Carbon dioxide
CWA	Clean Water Act, as amended
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980
DOT	United States Department of Transportation
DRE	Destruction and removal efficiency
E	Explosive waste
eff.	Effective
EPA	United States Environmental Protection Agency
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act
FIA	Federal Insurance Administration
FR	Federal Register
H	Acutely hazardous waste
ha	Hectare
HTMR	High temperature metals recovery

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HSWA	Hazardous and Solid Waste Amendments of 1994
I	Ignitable waste
KAR	Kentucky Administrative Regulation
kg	Kilogram
KPDES	Kentucky Pollution Discharge Elimination System
KRS	Kentucky Revised Statute
Ky.R.	Administrative Register of Kentucky
L	Liter
LC	Lethal concentration
LD	Lethal dose
ml	Milliliter
mm	Millimeter
N	Normal
NESHAPS	National Emissions Standards for Hazardous Air Pollutants
NPDES	National Pollutant and Discharge Elimination System
PCB	Polychlorinated biphenyl
pCi/l	Picocuries per liter
PHC	Principal hazardous constituent
Permit POHC	Permitted principal organic hazardous constituent
PM	Particulate matter
POHC	Principal organic hazardous constituent
ppm	parts per million
Trial POHC	Trial burn principal organic hazardous constituent
POTW	Publicly owned treatment works
PSD	Prevention of significant deterioration
psi	Pounds per square inch
psig	Pounds per square inch gauge
R	Reactive waste
RCRA	Resource Conservation and Recovery Act, as amended
SDWA	Safe Drinking Water Act, as amended
SEC	Securities and Exchange Commission
SIC	Standard Industrial Classification Code
SPCC	Spill Prevention, Control, and Countermeasures Plan
T	Toxic waste
UIC	Underground Injection Control
UICP	Underground Injection Control Program
USC	United States Code
U.S. EPA	United States Environmental Protection Agency
USGS	United States Geological Survey
USPS	United States Postal Service

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an

electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: This regulation does not affect any entities, because it only defines terms used in the chapter. The regulation was promulgated to comply with KRS 13A.222.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First Year: The cabinet will experience no additional costs or savings by promulgating the amendments to this regulation.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: There will be no additional factors affecting costs.

b. Reporting and paperwork requirements: There will be no extra paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on the state and local revenue with the promulgation of this regulation.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No costs are imposed with the promulgation of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: There were no other alternatives that would achieve compliance with KRS 13A.222.

8. Assessment of expected benefits of the administrative regulation: The benefit is having the definitions clearly stated at the beginning of each chapter.

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9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Not applicable since no requirements are imposed.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Tiering is applied to all of Kentucky's waste regulations, based on type and quantity of waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments establish definitions of hazardous waste terms and the clarification of certain definitions. This regulation is necessary to maintain consistency between state and federal programs. In addition, the regulation has been modified to reflect regulation construction specified in KRS 13A.222.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that manages hazardous waste.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. This administrative regulation establishes definitions for all terms within 401 KAR Chapter 38. These terms are assimilated from existing state and federal regulatory definitions and existing statutory definitions where applicable.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): Because this administrative regulation only establishes definitions for 401 KAR Chapter 38, this administrative regulation will not affect state, county, or local expenditures.

Other Explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (New Administrative Regulation)

401 KAR 39:005. Definitions related to 401 KAR Chapter 39.

RELATES TO: KRS 224.01, 224.10, 224.46, 40 CFR 260.10

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100(20) states that the cabinet may provide by administrative regulations for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. This chapter establishes a fee schedule for hazardous waste management. This administrative regulation defines essential terms that are used in this chapter.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or otherwise specifically indicated by context, terms in 401 KAR Chapter 39 shall have the meanings given in this Section.

(1) "100-year floodplain" means any land area which is subject to a one (1) percent or greater chance of flooding in any given year from any source.

(2) "100-year flood" means a flood that has a one (1) percent chance of being equaled or exceeded in any given year.

(3) "Aboveground tank" means a device meeting the definition of "tank" and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

(4) "Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

(5) "Accumulated speculatively" means that a material is accumulated before being recycled.

(a) A material is not accumulated speculatively, if the person accumulating it can show:

1. That the material is potentially recyclable and has a feasible means of being recycled; and

2. That - during the calendar year (commencing on January 1) - the amount of material that is recycled, or transferred to a different site for recycling, equals at least seventy-five (75) percent by weight or volume of the amount of that material accumulated at the beginning of the calendar year (including any material accumulated from previous years).

(b) In calculating the percentage of turnover, the seventy-five (75) percent requirement is to be applied to each material of the same type that is recycled in the same way. Materials accumulating in units that would be exempt from administrative regulation under Section 4(3) of 401 KAR 31:010 are not to be included in making the calculation. (Materials that are already defined as wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling.

(6) "Active fault" means a land area which, according to the weight of geological evidence, has a reasonable probability of being affected by movement along a fault to the extent that a waste site or facility would be damaged and thereby pose a threat to human health and the environment.

(7) "Active life" of a facility means the period from the initial receipt of waste at a waste site or facility until the cabinet receives certification of final closure.

(8) "Active portion" means any area of a facility where treatment, storage, or disposal operations are being or have been conducted and which have not been closed. It includes the treated area of a landfarm and the active face of a landfill. Covered, closed, or inactive portions of landfills, building roofs, and roads are excluded unless designated as "active portions" by the cabinet.

(9) "Admixed liner" means a liner made from a mixture of any of a multitude of materials, often asphalt or cement, with widely varying physical and chemical properties. Admixed liners shall be demonstrated to be structurally sound and chemically resistant to the waste placed in it so as to be capable of supporting the waste without cracking or disintegrating or allowing waste or leachate to escape.

(10) "Agricultural waste" means any nonhazardous waste resulting from the production and processing of on-the-farm agricultural products, including manures, prunings and crop residues.

(11) "Air stripping operation" is a desorption operation employed to transfer one (1) or more volatile components from a liquid mixture into a gas (air) either with or without the application of heat to the liquid. Packed towers, spray towers, and bubble-cap, sieve, or valve-type plate towers are among the process configurations used for contacting the air and a liquid.

(12) "Ampule" means a small sealed glass container for one (1) dose of sterile medicine.

(13) "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to hazardous waste management units including tanks between hazardous waste storage and treatment tanks to a point of disposal on site, or to a point of shipment for disposal off site.

(14) "Application" means the form approved by the cabinet for applying for a permit, including any additions, revisions or modifications and any narrative and drawings required by 401 KAR Chapters 30 to 48. The term includes: Part A of the application (Part A); Part B of the application (Part B); notice of intent; administration application; special waste application; or technical application.

(15) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(16) "As received waste" refers to the waste as received in the shipment from the generator or sample collector.

(17) "Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

(18) "Attenuation" means any decrease in the maximum concentration or total quantity of an applied chemical or biological constituent in a fixed time or distance traveled resulting from a physical, chemical, or biological reaction or transformation occurring in the zone of aeration or zone of saturation.

(19) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit or part of a facility, such as the plant manager, superintendent, or person of equivalent responsibility.

(20) "Average volatile organic concentration" or "average VO concentration" means the mass-weighted average volatile organic concentration of a hazardous waste as determined in accordance with the requirements of Section 4 of 401 KAR 35:281.

(21) "Base flood" means a flood that has a one (1) percent or greater chance of recurring in any year, or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

(22) "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such

connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

(23) "Board" shall have the meaning specified in KRS 224.46-810.

(24) "Bodily injury" shall have the meaning given by applicable Kentucky statutes. Bodily injury does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for bodily injury.

(25) "Boiler" means an enclosed device using control flame combustion and having the following characteristics:

(a)1. The unit shall have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

2. The unit's combustion chamber and primary energy recovery section(s) shall be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section (such as water walls and superheaters) shall be physically formed into one (1) manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream) and fluidized bed combustion units; and

3. While in operation, the unit shall maintain a thermal energy recovery efficiency of at least sixty (60) percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

4. The unit shall export and utilize at least seventy-five (75) percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(b) The unit is one (1) which the cabinet has determined, on a case-by-case basis, to be a boiler, after considering the standards in 401 KAR 30:080.

(26) "Bottoms receiver" means a container or tank used to receive and collect heavier bottoms fractions of the distillation feed stream that remain in the liquid phase.

(27) "Burn" means burning for energy recovery or destruction, or processing for materials recovery or as an ingredient.

(28) "By-product" is a material that is not one (1) of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a coproduct that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

(29) "Cabinet" shall have the meaning specified in KRS 224.01-010.

(30) "Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

(31) "Cation exchange capacity" means the sum of exchangeable cations a soil can absorb expressed in milliequivalents per 100 grams of soil as determined by sampling the soil to the depth of cultivation or solid waste placement, whichever is greater, and analyzing by the summation method for distinctly acid soils or the sodium acetate method for neutral, calcareous, or saline soils.

(32) "Certificate" shall have the meaning specified in KRS 224.46-810.

(33) "Certification" means a statement of professional opinion based upon knowledge and belief.

(34) "Closed portion" means that portion of a facility which an

owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements.

(35) "Closed-vent system" means a system that is not open to the atmosphere and that is composed of piping, connections, and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device.

(36) "Closure plan" means the plan for closure prepared in accordance with the requirements of Section 3 of 401 KAR 34:070 or Section 3 of 401 KAR 35:070.

(37) "Closure" shall have the meaning specified in KRS 224.01-010.

(38) "Component" means either the tank or ancillary equipment of a tank system.

(39) "Condenser" means a heat-transfer device that reduces a thermodynamic fluid from its vapor phase to its liquid phase.

(40) "Conditionally exempt small quantity generator" means:

(a) A generator who generates no more than 100 kilograms of hazardous waste in a calendar month; and

(b) A generator who generates acutely hazardous waste listed in Sections 2, 3, and 4(5) of 401 KAR 31:040 in a calendar month in quantities greater than one (1) kilogram. All quantities of that acutely hazardous waste are subject to administrative regulation under 401 KAR Chapters 32 through 39, and the notification and permitting requirements of KRS 224.01-400, 224.40-310, 224.46-510, 224.46-580, and 224.50-130 to 224.50-413.

(41) "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(42) "Connector" means flanged, screwed, welded, or other joined fitting used to connect two (2) pipelines or a pipeline and a piece of equipment. For the purposes of reporting and recordkeeping, connector means flanged fittings that are not covered by insulation or other materials that prevent location of the fittings.

(43) "Consignee" means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste is sent.

(44) "Constituent" shall have the same meaning as "hazardous waste constituent."

(45) "Container" means any portable device in which hazardous waste is transported, stored, treated, or otherwise handled, and includes transport vehicles that are containers themselves (for example, tank trucks, tanker-trailers, and rail tank cars), and containers placed on or in a transport vehicle.

(46) "Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of 401 KAR 34:245 or 35:245.

(47) "Contaminate" means introduce a substance that would cause:

(a) The concentration of that substance in the groundwater to exceed the maximum contaminant level specified in 401 KAR 30:031, Sections 5 and 6 of 401 KAR 47:030, or Section 8 of 401 KAR 34:060;

(b) An increase in the concentration of that substance in the groundwater where the existing concentration of that substance exceeds the maximum contaminant level specified in 401 KAR 30:031, 401 KAR 47:030, or Section 8 of 401 KAR 34:060; or

(c) A significant increase above established background levels, for substances that do not have an established maximum contamination level.

(48) "Contamination" means the degradation of naturally occurring water, air, or soil quality either directly or indirectly as a result of human activities.

(49) "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in the event of a fire, explosion, or release of waste or waste constituents into the environment which has the potential for endan-

gering human health and the environment. Financial planning to identify resources for initiation of such action is a part of contingency plan development.

(50) "Continuous recorder" means a data recording device recording an instantaneous data value at least once every 15 minutes.

(51) "Control device shutdown" means the cessation of operation of a control device for any purpose.

(52) "Control device" means an enclosed combustion device, vapor recovery system, or flare. Any device the primary function of which is the recovery or capture of solvents or other organics for use, reuse, or sale (for example, a primary condenser on a solvent recovery unit) is not a control device.

(53) "Corrective action management unit" or "CAMU" means an area within a facility that is designated by the cabinet under 401 KAR 34:287, for the purpose of implementing corrective action requirements under Section 12 of 401 KAR 34:060 and KRS 224.46-520. A CAMU shall only be used for the management of remediation wastes pursuant to implementing such corrective action requirements at the facility.

(54) "Cover" means a device or system which is placed on or over a hazardous waste such that the entire hazardous waste surface area is enclosed and sealed to reduce air emissions to the atmosphere. A cover may have openings such as access hatches, sampling ports, and gauge wells that are necessary for operation, inspection, maintenance, or repair of the unit on which the cover is installed provided that each opening is closed and sealed when not in use. Examples of covers include a fixed roof installed on a tank, a floating membrane cover installed on a surface impoundment, a lid installed on a drum, and an enclosure in which an open container is placed during waste treatment.

(55) "Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(56) "Current closure and postclosure cost estimates" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:090 or Section 1(1), (2) and (3) of 401 KAR 35:090.

(57) "Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

(58) "Current plugging and abandonment cost estimates" as used in subsection (1) of this section refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer (see 40 CFR 144.70(f)).

(59) "Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 40 CFR 144.62(a), (b), and (c).

(60) "Current postclosure cost estimate" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:100 or Section 1(1), (2) and (3) of 401 KAR 35:100.

(61) "Debris" means solid material exceeding a 60mm particle size that is intended for disposal and that is: a manufactured object; plant or animal matter; or natural geologic material. However, the following materials are not debris: Any material for which a specific treatment standard is provided in 401 KAR 37:040, namely lead acid batteries, cadmium batteries, and radioactive lead soils; Process residuals such as smelter slag and residues from the treatment of waste, wastewater, sludges, or air emission residues; and intact containers of hazardous waste that are not ruptured and that retain at least 75% of their original volume. A mixture of debris that has not been treated to the standards provided by Section 6 of 401 KAR 37:040 and other material is subject to regulation as debris if the mixture is comprised primarily of debris, by volume, based on visual inspection.

(62) "Designated facility" means a hazardous waste treatment,

storage, or disposal facility which:

(a) Has received a hazardous waste site or facility permit (or a facility with interim status) in accordance with the requirements of 401 KAR Chapter 38;

(b) Has received a permit from a state authorized in accordance with 40 CFR Part 271, and EPA permit (or a facility with interim status) in accordance with 40 CFR Parts 270 and 124; or

(c) Is regulated under Section 6(3)(b) of 401 KAR 31:010 or 401 KAR Chapter 36, 40 CFR 261.6(c)(2) or 40 CFR Part 266, and that has been designated on the manifest by the generator pursuant to Section 1 of 401 KAR 32:020. If a waste is destined to a hazardous waste site or facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility shall be a facility allowed by the receiving state to accept that waste.

(63) "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in Section 4(1) and (3) of 401 KAR 43:020 and Section 4(1) and (3) of 401 KAR 43:030. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

(64) "Destruction or adverse modification" means an alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

(65) "Dike" means an embankment or ridge of either natural or manmade materials used to prevent the movement of liquids, sludges, solids, or other materials.

(66) "Direct transfer equipment" means any device (including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps) that is used to distribute, meter, or control the flow of hazardous waste between a container (for example, transport vehicle) and a boiler or industrial furnace.

(67) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

(68) "Disposal" shall have the meaning specified in KRS 224.01-010.

(69) "Distillate receiver" means a container or tank used to receive and collect liquid material (condensed) from the overhead condenser of a distillation unit and from which the condensed liquid is pumped to larger storage tanks or other process units.

(70) "Distillation operation" means an operation, either batch or continuous, separating one (1) or more feed stream(s) into two (2) or more exit streams, each exit stream having component concentrations different from those in the feed stream(s). The separation is achieved by the redistribution of the components between the liquid and vapor phase as they approach equilibrium within the distillation unit.

(71) "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(72) "Double block and bleed system" means two (2) block valves connected in series with a bleed valve or line that can vent the line between the two (2) block valves.

(73) "Draft permit" shall have the same meaning as "proposed permit".

(74) "Drip pad" means an engineered structure consisting of a curbed, free-draining base, constructed of nonearthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(75) "Effluent limitations" shall have the same meaning as KRS 224.01-010.

(76) "Elementary neutralization unit" means a device which:

(a) Is used for neutralizing wastes that are hazardous only

because they exhibit the corrosivity characteristic defined in Section 3 of 401 KAR 31:030, or they are listed in 401 KAR 31:040 only for this reason; and

(b) Meets the definition of tank, tank system, container, transport vehicle, or vessel in this section.

(77) "Emergency permit" means a permit issued by the cabinet to temporarily store, treat or dispose of hazardous waste in accordance with the provisions of Section 2 of 401 KAR 38:060, to temporarily manage, process, or dispose of a solid waste in accordance with the provisions of Section 2 of 401 KAR 47:150 or to temporarily store, treat, or dispose of special waste in accordance with the provisions of Section 1 of 401 KAR 45:135.

(78) "Endangered or threatened species" means any species listed as such pursuant to Section 4 of the Endangered Species Act, as amended, 16 USC 1536.

(79) "Engineer" shall have the meaning specified in KRS 322.010. An independent, professional engineer shall be registered in Kentucky pursuant to KRS 322.040 and shall be qualified to engage in waste management engineering practices.

(80) "EPA acknowledgment of consent" means the cable sent to EPA from the U.S. Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

(81) "EPA hazardous waste number" means the number assigned by EPA and the cabinet to each hazardous waste listed in 401 KAR 31:040, and to each characteristic identified in 401 KAR 31:030.

(82) "EPA identification number" means the number assigned by EPA or the cabinet to each generator; transporter; or treatment, storage, or disposal facility.

(83) "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice and which has a channel bottom that is always above the local water table.

(84) "Equipment" means each valve, pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, or flange, and any control devices or systems required by this administrative regulation.

(85) "Equivalent method" means any testing or analytical method, approved jointly by the administrator and the secretary under 401 KAR Chapter 31, or methods in 401 KAR Chapters 47 and 48, approved by the secretary of the cabinet.

(86) "Existing" indicates a boiler or industrial furnace that on or before August 21, 1991 is either in operation burning, or processing hazardous waste or for which construction (including the ancillary facilities to burn or to process the hazardous waste) has commenced.

(87) "Existing component" shall have the same meaning as "existing tank system."

(88) "Existing facility" shall have the same meaning as "existing hazardous waste site or facility".

(89) "Existing hazardous waste site or facility" means a hazardous waste facility which was in operation, or for which continuous construction had commenced, on or before November 19, 1980. A facility has commenced construction if:

(a) The owner or operator had obtained the federal, state and local approvals or permits necessary to begin physical construction; and

(b) Either:

1. A continuous on-site, physical construction program has begun; or

2. The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the facility to be completed within a reasonable time.

(90) "Existing portion" means that land surface area of an existing hazardous waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the

issuance of a permit.

(91) "Existing tank system" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(a) A continuous on-site physical construction or installation program has begun; or

(b) The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the site or installation of the tank system to be completed within a reasonable time.

(92) "External floating roof" means a pontoon or double-deck type floating roof that rests on the surface of a hazardous waste being managed in a tank that has no fixed roof.

(93) "Face amount" means the total amount the insurer is obligated to pay under the policy.

(94) "Facility" means:

(a) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).

(b) For the purpose of implementing corrective action under Section 12 of 401 KAR 34:060, all contiguous property under the control of the owner or operator seeking a hazardous waste permit. This definition also applies to facilities implementing corrective action under KRS 224.46-520.

(95) "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation, and the United States Government Printing Office.

(96) "Federal, state, and local approvals or permits necessary to begin physical construction" means permits and approvals required under federal, state, or local hazardous waste control statutes, administrative regulations, or ordinances.

(97) "Final closure" of a hazardous waste site or facility means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under 401 KAR Chapters 34 and 35 are no longer conducted at the facility unless subject to the provisions in Section 5 of 401 KAR 32:030.

(98) "First attempt at repair" means to take rapid action for the purpose of stopping or reducing leakage of organic material to the atmosphere using best practices.

(99) "Fiscal year" means a twelve (12) month period for accounting and other financial purposes.

(100) "Fixed roof" means a rigid cover that is installed in a stationary position so that it does not move with fluctuations in the level of the hazardous waste placed in a tank.

(101) "Flame zone" means the portion of the combustion chamber in a boiler occupied by the flame envelope.

(102) "Floating membrane cover" means a cover consisting of a synthetic flexible membrane material that rests upon and is supported by the hazardous waste being managed in a surface impoundment.

(103) "Floating roof" means a pontoon-type or double-deck type cover that rests upon and is supported by the hazardous waste being managed in a tank, and is equipped with a closure seal or seals to close the space between the cover edge and the tank wall.

(104) "Flood plain" means areas adjoining inland waters which are inundated by the base flood, unless otherwise specified in 401 KAR 30:031 or 401 KAR 47:030, and includes: 100-year floodplain and floodway.

(105) "Floodway" means the channel of the waterway, stream or river and that portion of the adjoining floodplain which provides for

passage of the 100-year flood flow without increasing the floodwater depth across the 100-year floodplain by more than one (1) foot.

(106) "Flow indicator" means a device that indicates whether gas flow is present in a vent stream.

(107) "Food chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(108) "Fractionation operation" means a distillation operation or method used to separate a mixture of several volatile components of different boiling points in successive stages, each stage removing from the mixture some proportion of one of the components.

(109) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(110) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.

(111) "Generator" shall have the meaning specified in KRS 224.01-010.

(112) "Governing body" shall have the same meaning as KRS 224.01-010.

(113) "Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.

(114) "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table, and perched water zones below the B-soil horizon, including water circulating through fractures, bedding planes, and solution conduits.

(115) "Halogenated organic compounds" or "HOCs" means those compounds having a carbon-halogen bond that are listed under 401 KAR 37:110.

(116) "Hazardous constituent" shall have the meaning specified in KRS 224.01-010.

(117) "Hazardous waste constituent" means a constituent which caused the cabinet to list the hazardous waste in 401 KAR 31:040, or a constituent listed in Section 5(3) of 401 KAR 31:030.

(118) "Hazardous waste management unit shutdown" means a work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit. An unscheduled work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit for less than twenty-four (24) hours is not a hazardous waste management unit shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping operation are not hazardous waste management unit shutdowns.

(119) "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed. Hazardous waste management units include: aboveground tank; component; existing tank system or existing component; in-ground tank; new tank system or new tank component; on-ground tank; tank system; underground tank; or unfit-for-use tank system.

(120) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

(121) "Hazardous waste site or facility" means any place at which hazardous waste is treated, stored, or disposed of by landfilling, incineration, or any other method. Hazardous waste site or facility includes: boiler; disposal facility; elementary neutralization unit; incinerator; industrial furnace; hazardous waste transfer facility; injection well; landfill; land treatment facility; miscellaneous unit; pile

or waste pile; replacement unit; storage facility; sludge dryer; surface impoundment; tank; thermal treatment facility; totally enclosed treatment facility; treatment facility; or wastewater treatment unit.

(122) "Hazardous waste transfer facility" means any transportation related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

(123) "Hazardous waste" shall have the meaning specified in KRS 224.01-010.

(124) "Holocene" means the most recent epoch of the quaternary period, extending from the end of the pleistocene to the present.

(125) "Hot well" means a container for collecting condensate as in a steam condenser serving a vacuum-jet or steam-jet ejector.

(126) "Household waste" means any waste material (including garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

(127) "In existence" shall have the same meaning as "existing."

(128) "In gas service" means that the piece of equipment contains or contacts a hazardous waste stream that is in the gaseous state at operating conditions.

(129) "In heavy liquid service" means that the piece of equipment is not in gas service or in vapor service or in light liquid service.

(130) "In light liquid service" means that the piece of equipment contains or contacts a waste stream where the vapor pressure of one (1) or more of the components in the stream is greater than three-tenths (0.3) kilopascals (kPa) at twenty (20) degrees Centigrade, the total concentration of the pure components having a vapor pressure greater than three-tenths (0.3) kPa at twenty (20) degrees Centigrade is equal to or greater than twenty (20) percent by weight, and the fluid is a liquid at operating conditions.

(131) "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

(132) "In situ sampling systems" means nonextractive samplers or in-line samplers.

(133) "In vacuum service" means that equipment is operating at an internal pressure that is at least 5 kPa below ambient pressure.

(134) "In vapor service" shall have the same meaning as "in gas service."

(135) "In-ground tank" means a device meeting the definition of "tank" in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(136) "Inactive portion" means that portion of a hazardous waste site or facility which was not operated after November 19, 1980.

(137) "Incinerator" means any enclosed device that:

(a) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(b) Meets the definition of infrared incinerator or plasma arc incinerator.

(138) "Incompatible waste" means a hazardous waste which is unsuitable for placement in a particular device or facility because it may cause corrosion or decay of containment materials, or unsuitable for commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(139) "Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

(140) "Individual generation site" means the contiguous site at or on which one (1) or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one (1) or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

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(141) "Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

(a) Cement kilns;

(b) Lime kilns;

(c) Aggregate kilns;

(d) Phosphate kilns;

(e) Coke ovens;

(f) Blast furnaces;

(g) Smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);

(h) Titanium dioxide chloride process oxidation reactors;

(i) Methane reforming furnaces;

(j) Pulping liquor recovery furnaces;

(k) Combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(l) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least three (3) percent, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of twenty (20) percent as generated; or

(m) Other devices as the cabinet may, after notice and comment, add to this list on the basis of criteria and Section 5 of 401 KAR 30:080.

(142) "Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(143) "Injection well" means a well into which fluids are injected to achieve subsurface emplacement.

(144) "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained hazardous waste or reagents used to treat the hazardous waste.

(145) "Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of a hazardous waste management unit including tank systems.

(146) "Interim status" means the designation of a hazardous waste site or facility which was in existence on November 19, 1980, and has submitted a Part A application under 401 KAR Chapter 38 or under 40 CFR Part 270 and is treated as having a permit until final administrative disposition of the application is made.

(147) "Intermittent stream" means a stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year.

(148) "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

(149) "Internal floating roof" means a floating roof that rests or floats on the surface (but not necessarily in complete contact with it) of a hazardous waste being managed in a tank that has a fixed roof.

(150) "IUC well" means a underground injection control well as provided in 40 CFR Part 144.

(151) "Karst terrain" means a type of topography where limestone, dolomite or gypsum is present and is characterized by naturally occurring closed topographic depressions or sinkholes, caves, disrupted surface drainage, and well developed underground solution channels formed by dissolution of these rocks by water moving underground.

(152) "Key personnel" shall have the meaning specified in KRS

224.01-010.

(153) "Lab pack" means any large container equal to or smaller than fifty-five (55) gallons that holds many smaller containers of various content tightly secured with packing material.

(154) "Lamp" means the bulb or tube portion of a lighting device specifically designed to produce radiant energy, most often in the ultraviolet (UV), visible, and infra-red (IR) regions of the electromagnetic spectrum. Examples of common lamps include, but is not limited to, incandescent, fluorescent, high pressure sodium, mercury vapor, metal halide, high intensity discharge, and neon lamps.

(155) "Land disposal" shall have the meaning specified in KRS 224.01-010.

(156) "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface. These facilities are disposal facilities if the waste will remain after closure.

(157) "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

(158) "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(159) "Large quantity handler of universal waste" means a universal waste handler who accumulates 5,000 kilograms or more total universal waste (batteries, lamps, pesticides, or thermostats, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total of universal waste is accumulated.

(160) "Leachate" means any liquid including any suspended components in the liquid, that has percolated through or drained from waste.

(161) "Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment system or the presence of a release of hazardous waste, hazardous waste constituents or accumulated liquid in the secondary containment system. Such a system shall employ operational controls (daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment system or the presence of a release of hazardous waste constituents or accumulated liquids into the secondary containment system.

(162) "Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

(163) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(164) "Liner" means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, ground water, or surface water at any time during the active life of the facility.

(165) "Liquid-mounted seal" means a foam or liquid-filled primary seal mounted in contact with the hazardous waste between the tank wall and the floating roof continuously around the circumference of the tank.

(166) "Local government" means the fiscal court of the county, urban-county government, or governing body of an incorporated municipality wherein a hazardous waste landfill or other site or facility for the land disposal of hazardous waste is proposed.

(167) "Major modification" means for hazardous waste sites or facilities, a change in ownership where the cabinet determines that other changes in the permit are necessary as a result of the change in ownership or operational control, area occupied, disposal method, or other significant change in the operation of a waste site or facility (Note: Minor modifications are described in Section 3 of 401 KAR 38:040).

(168) "Malfunction" means any sudden failure of a control device or a hazardous waste management unit or failure of a hazardous waste management unit to operate in a normal or usual manner, so that organic emissions are increased.

(169) "Manifest document number" means the EPA twelve (12) digit identification number assigned to the generator plus a unique, serially increasing, five (5) digit document number assigned to the manifest by the generator for recordkeeping and reporting purposes.

(170) "Manifest" shall have the meaning specified in KRS 224.01-010.

(171) "Maximum organic vapor pressure" means the equilibrium partial pressure exerted by the hazardous waste contained in a tank determined at the temperature equal to either: (1) the local maximum monthly average temperature as reported by the National Weather Service when the hazardous waste is stored or treated at ambient temperature; or (2) the highest calendar-month average temperature of the hazardous waste when the hazardous waste is stored at temperatures above the ambient temperature or when the hazardous waste is stored or treated at temperatures below the ambient temperature.

(172) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

(173) "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of, and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR Part 146, containment building, corrective action management unit, or unit eligible for a research, development, and demonstration permit under Section 6 of 401 KAR 38:060.

(174) "Monitoring well" means a well used to obtain water samples for water quality and quantity analysis and groundwater levels.

(175) "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.

(176) "Movement" means that hazardous waste transported to a facility in an individual vehicle.

(177) "Net working capital" means current assets minus current liabilities.

(178) "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

(179) "New tank component" shall have the same meaning as "new tank system."

(180) "New tank system" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation commenced after July 14, 1986; however, for purposes of Section 4(7)(b) of 401 KAR 34:190 and Section 4(7)(b) of 401 KAR 35:190, a new tank system is one for which construction commenced after July 14, 1986.

(181) "New" means any hazardous waste site or facility that commenced construction after November 19, 1980.

(182) "No detectable organic emissions" means no escape of organics from a device or system to the atmosphere as determined by an instrument reading less than 500 parts per million by volume (ppmv) above the background level at each joint, fitting, and seal when measured in accordance with the requirements of Method 21 in 40 CFR part 60, appendix A, and by no visible openings or defects

in the device or system such as rips, tears, or gaps.

(183) "Nonsudden accidental occurrence" means an occurrence that takes place over time and involves continuous or repeated exposure.

(184) "Nonwastewaters" means wastes that do not meet the criteria for wastewaters found in the definition for wastewaters.

(185) "Not detected" means at or below the lower method calibration limit (MCL) in SW-846, Method 8290, Table 1.

(186) "Off-site" means properties noncontiguous to the site.

(187) "On-site" means on the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing, as opposed to going along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access is also considered on-site property.

(188) "Onground tank" means a devise meeting the definition of tank that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(189) "Open burning" means the combustion of any material or solid waste without:

(a) Control of combustion air to maintain adequate temperature for efficient combustion;

(b) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(c) Control of emission of the gaseous combustion products.

(190) "Open-ended valve or line" means any valve, except pressure relief valves, having one (1) side of the valve seat in contact with process fluid and one (1) side open to the atmosphere, either directly or through open piping.

(191) "Operational plan" means the approved plan of operations filed with the cabinet which describes the method of operation that the permittee will use in the treatment, storage, or disposal of wastes.

(192) "Operator" means any person responsible for overall operation of an on-site or off-site waste facility, including any private contractor conducting operational activities at a federal facility.

(193) "Other site or facility for the land-disposal of hazardous waste" means a disposal facility but shall not include a storage facility or a treatment facility.

(194) "Owner" means any person who owns an on-site or off-site waste facility, or any part of a facility.

(195) "Parent corporation" means a corporation which directly owns at least fifty (50) percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

(196) "Part A of the application" or "Part A" means the standard forms or format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:080.

(197) "Part B of the application" or "Part B" means the standard format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:090 to 401 KAR 38:210.

(198) "Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of 401 KAR Chapters 34 and 35 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

(199) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface run-off. The term does not include "intermittent stream" or "ephemeral stream".

(200) "Permit by rule" means authorization allowing certain

classes of sites or facilities to manage waste consistent with 401 KAR Chapters 30 to 49, without submission of a registration or permit application to the cabinet. Examples of hazardous waste sites or facilities which are permitted by rule include facilities operating under an interim status permit and facilities identified in Section 1 of 401 KAR 38:060.

(201) "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management administrative regulations. The term permit includes permit-by-rule, registered permit-by-rule, research, development, and demonstration permit, and emergency permit. However, the term permit does not include draft permit or proposed permit.

(202) "Permittee" means any person holding a valid permit issued by the cabinet to manage, treat, store, or dispose of waste.

(203) "Person" shall have the meaning specified in KRS 224.01-010.

(204) "Personnel" or "facility personnel" means all persons who work at or oversee the operations of a waste facility, and whose actions or failure to act may result in noncompliance with the requirements of the waste management administrative regulations.

(205) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(a) Is a new animal drug under FFDCA section 201(w), or

(b) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug; or

(c) Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by paragraph (a) or (b) of this subsection.

(206) "Pile" or "waste pile" means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

(207) "Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame and which is not listed as an industrial furnace.

(208) "Point of compliance" means for solid waste site and facilities, groundwater monitoring wells located within 250 feet of the waste boundary as approved by the cabinet.

(209) "Point of waste origination" means as follows:

(a) When the facility owner or operator is the generator of the hazardous waste, the point of waste origination means the point where a solid waste produced by a system, process, or waste management unit is determined to be a hazardous waste as defined in 40 CFR part 261.

(b) When the facility owner and operator are not the generator of the hazardous waste, point of waste origination means the point where the owner or operator accepts delivery or takes possession of the hazardous waste.

(210) "Point of waste treatment" means the point where a hazardous waste exits a waste management unit used to destroy, degrade, or remove organics in the hazardous waste.

(211) "Point source" means any discernible, confined, and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(212) "Pollutant" shall have the same meaning as KRS 224.01-010.

(213) "Polychlorinated biphenyls" or "PCB" means halogenated organic compounds defined in accordance with 40 CFR 761.2 as of July 1989.

(214) "Postclosure care" means the manner in which a facility shall be maintained when it no longer accepts waste for disposal.

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(215) "Postclosure monitoring and maintenance" shall have the meaning specified in KRS 224.01-010.

(216) "Postclosure plan" means the plan for postclosure care prepared in accordance with the requirements of Sections 8 to 11 of 401 KAR 34:070 or Sections 8 to 11 of 401 KAR 35:070.

(217) "Pressure release" means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device.

(218) "Primary exporter" means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with Section 1 of 401 KAR 32:020 which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

(219) "Process heater" means a device that transfers heat liberated by burning fuel to fluids contained in tubes, including all fluids except water that are heated to produce steam.

(220) "Process vent" means any open-ended pipe or stack that is vented to the atmosphere either directly, through a vacuum-producing system, or through a tank (distillate receiver, condenser, bottoms receiver, surge control tank, separator tank, or hot well) associated with hazardous waste distillation fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations.

(221) "Property damage" shall have the meaning given by applicable Kentucky statutes. Property damage does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for property damage.

(222) "Proposed permit" means a document prepared by the cabinet indicating the cabinet's tentative decision to issue or deny, modify, revoke or terminate a permit.

(223) "Publicly owned treatment works" or "POTW" shall have the meaning specified in KRS 224.01-010.

(224) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump.

(225) "Qualified groundwater scientist" means a geologist registered in Kentucky who has received a baccalaureate or postgraduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields to enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

(226) "Receiving country" means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal (except short-term storage incidental to transportation).

(227) "Recharge zone" means an area supplying the water which enters an underground drinking water source.

(228) "Reclaimed" means a material that is processed to recover a usable product, or that is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents.

(229) "Recovered material" shall have the meaning specified in KRS 224.01-010.

(230) "Recyclable materials" means hazardous wastes that are recycled.

(231) "Recycled" means a material that is used, reused, or reclaimed.

(232) "Recycling" shall have the meaning specified in KRS 224.01-010.

(233) "Regional integrated waste treatment and disposal demonstration facility" shall have the meaning specified in KRS 224.01-010.

(234) "Regulated unit" means hazardous waste land disposal sites or facilities, or portions of existing hazardous waste land disposal sites or facilities that continued to receive waste after January 26, 1983.

(235) "Remediation waste" means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or

which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under Section 12 of 401 KAR 34:060 and KRS 224.46-520. For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing KRS 224.46-520 for releases beyond the facility boundary.

(236) "Repaired" means that equipment is adjusted, or otherwise altered, to eliminate a leak.

(237) "Replacement unit" means a landfill, surface impoundment, or waste pile unit from which all or substantially all of the waste is removed, and that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or approved corrective action.

(238) "Representative sample" means a sample of a universe or whole (for example, waste pile, lagoon, or groundwater) which can be expected to exhibit the average properties of the universe or whole.

(239) "Research, development, and demonstration permit" means a permit issued by the cabinet for a hazardous waste treatment facility that utilizes an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under 401 KAR Chapters 34 through 36.

(240) "Resource recovery" means the recovery of material or energy from waste.

(241) "Run-off" means any rainwater, leachate, or other liquid that drains overland from any part of a facility.

(242) "Run-on" means any rainwater, leachate, or other liquid that drains overland onto any part of a facility.

(243) "Saturated zone" shall have the same meaning as "zone of saturation".

(244) "Schedule of compliance" means a schedule of remedial measures included in a permit or cabinet order, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with KRS Chapter 224 and 401 KAR Chapters 30 to 49.

(245) "Scrap metal" is bits and pieces of metal parts (for example, bars, turnings, rods, sheets, or wire) or metal pieces that may be combined together with bolts or soldering (for example, radiators, scrap automobiles, or railroad boxcars), which when worn or superfluous can be recycled.

(246) "Secretary" shall have the meaning specified in KRS 224.01-010.

(247) "Sensor" means a device that measures a physical quantity or the change in a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

(248) "Separator tank" means a device used for separation of two immiscible liquids.

(249) "Sewage system" shall have the meaning specified in KRS 224.01-010.

(250) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the waste facility or activity.

(251) "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 BTU per pound of sludge treated on a wet-weight basis.

(252) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.

(253) "Small quantity generator" means a generator who generates more than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month.

(254) "Small quantity handler of universal waste" means a universal waste handler who does not accumulate more than 5,000 kilograms of universal waste (batteries, lamps, pesticides, or thermostats, collected collectively) at any time.

(255) "Solid waste management unit" shall mean any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at a facility at which solid wastes have been routinely and systematically released.

(256) "Solvent extraction operation" means an operation or method of separation in which a solid or solution is contacted with a liquid solvent (the two (2) being mutually insoluble) to preferentially dissolve and transfer one (1) or more components into the solvent.

(257) "Sorb" means to either adsorb, absorb, or both.

(258) "Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both.

(259) "Spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

(260) "Spill" means any accidental spilling, leaking, pumping, pouring, emitting, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes into or on any land or water.

(261) "Start-up" means the setting in operation of a hazardous waste management unit or control device for any purpose.

(262) "State" means any of the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands or Guam but does not include any foreign country.

(263) "Steam stripping operation" means a distillation operation in which vaporization of a volatile constituents of a liquid mixture takes place by the introduction of steam directly into the charge.

(264) "Storage facility" means a facility or part of a facility at which hazardous waste is held for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere. A generator who accumulates his own hazardous wastes in an approved manner for less than ninety (90) days for subsequent transport on site or off site is not operating or maintaining a storage facility.

(265) "Storage of hazardous waste" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

(266) "Storage" shall have the meaning specified in KRS 224.01-010.

(267) "Substantial business relationship" means the extent of a business relationship necessary to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" shall arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the cabinet.

(268) "Sudden accidental occurrence" means an occurrence which is not continuous or repeated in nature.

(269) "Sump" means any pit or reservoir that meets the definition of tank, and those troughs and trenches connected to it, that serves to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile administrative regulations, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(270) "Surface impoundment" means a facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(271) "Surge control tank" means a large-sized pipe or storage reservoir sufficient to contain the surging liquid discharge of the process tank to which it is connected.

(272) "Tangible net worth" means the tangible assets that remain after deducting liabilities; these assets would not include intangibles such as goodwill and rights to patents or royalties.

(273) "Tank" means a stationary device designed to contain an accumulation of hazardous waste that is constructed primarily of nonearthen materials (for example, wood, concrete, steel, or plastic) which provide structural support and which does not meet the definition of any other unit.

(274) "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

(275) "Termination" shall have the meaning specified in KRS 224.01-010.

(276) "The full amount of the liability coverage to be provided" means the amount of coverage for sudden and nonsudden occurrences required to be provided by the owner or operator, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(277) "Thermal treatment facility" means a facility or part of a facility which uses elevated temperatures as the primary means to change the chemical, physical or biological character or composition of hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge.

(278) "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge (see also "incinerator" and "open burning").

(279) "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of Section 4(3)(b) of 401 KAR 43:020 or Section 4(3)(b) of 401 KAR 43:030.

(280) "Thin-film evaporation operation" means a distillation operation that employs a heating surface consisting of a large diameter tube that may be either straight or tapered, horizontal or vertical. Liquid is spread on the tube wall by a rotating assembly of blades that maintain a close clearance from the wall or actually ride on the film of liquid on the wall.

(281) "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which acid is neutralized.

(282) "Transit country" means any foreign country, other than a receiving country, through which a hazardous waste is transported.

(283) "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body is a separate transport vehicle.

(284) "Transportation" shall have the meaning specified in KRS 224.01-010.

(285) "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway or water.

(286) "Treatability study" means:

(a) A study in which a hazardous waste is subjected to a treatment process to determine:

1. Whether the waste is amenable to the treatment process;
2. What pretreatment, if any, is required;

3. The optimal process conditions needed to achieve the desired treatment;

4. The efficiency of a treatment process for a specific waste or wastes; or

5. The characteristics and volumes of residuals from a particular treatment process.

(b) For the purpose of 401 KAR 31:010, Section 4(5) and (6), exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies.

(c) A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

(287) "Treatment facility" means a facility or part of a facility using any method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste nonhazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

(288) "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

(289) "Treatment" shall have the meaning specified in KRS 224.01-010.

(290) "Underground drinking water source" means:

(a) An aquifer supplying drinking water for human consumption; or

(b) An aquifer in which the groundwater contains less than 10,000 mg/l total dissolved solids.

(291) "Underground injection" means the subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well".)

(292) "Underground tank" means a device meeting the definition of "tank" in this section whose entire surface area is totally below the surface of and covered by the ground.

(293) "Underlying hazardous constituent" means any constituent listed in Section 1 of 401 KAR 37:040, Table - Treatment Standards for Hazardous Wastes, except vanadium and zinc, which can reasonably be expected to be present at the point of generation of the hazardous waste, at a concentration above the constituent-specific treatment standards.

(294) "Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

(295) "Universal waste" means any of the following hazardous wastes that are subject to the universal waste requirements of 401 KAR Chapter 43:

(a) Batteries as described in Section 2 of 401 KAR 43:010;

(b) Pesticides as described in Section 3 of 401 KAR 43:010;

(c) Thermostats as described in Section 4 of 401 KAR 43:010; and

(d) Spent Lamps as described in Section 5 of 401 KAR 43:010.

(296) "Universal waste handler":

(a) Means:

1. A generator of universal waste; or

2. The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(b) Does not mean:

1. A person who treats (except under the provisions of Sections 4(1) or (3) of 401 KAR 43:020 or Sections 4(1) or (3) of 401 KAR 43:030), disposes of, or recycles universal waste; or

2. A person engaged in the off-site transportation of universal

waste by air, rail, highway, or water, including a universal waste transfer facility.

(297) "Universal waste transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.

(298) "Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

(299) "Unsaturated zone" shall have the same meaning as "Zone of aeration".

(300) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(301) "Used oil" shall have the same meaning as KRS 224.50-545.

(302) "Used or reused" means a material that is either:

(a) Employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one (1) process used as feedstock in another process). However, a material shall not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

(b) Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

(303) "Vapor incinerator" means any enclosed combustion device that is used for destroying organic compounds and does not extract energy in the form of steam or process heat.

(304) "Vapor recovery system" means that equipment, device, or apparatus capable of collecting vapors and gases discharged from a storage tank, and a vapor processing system capable of affecting such vapors and gases so as to prevent their emission into the atmosphere.

(305) "Vapor-mounted seal" means a foam-filled primary seal mounted continuously around the circumference of the tank so that there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the hazardous waste surface, and the floating roof.

(306) "Vented" means discharged through an opening, typically an open-ended pipe or stack, allowing the passage of a stream of liquids, gases, or fumes into the atmosphere. The passage of liquids, gases, or fumes is caused by mechanical means such as compressors or vacuum-producing systems or by process-related means such as evaporation produced by heating and not caused by tank loading and unloading (work losses) or by natural means such as diurnal temperature changes.

(307) "Vessel" means any watercraft used or capable of being used as a means of transportation on the water.

(308) "Volatile organic concentration" or "VO concentration" means the fraction by weight of organic compounds in a hazardous waste expressed in terms of parts per million (ppmw) as determined by direct measurement using Method 25D or by knowledge of the waste in accordance with the requirements of Section 4 of 401 KAR 35:040.

(309) "Washout" means the carrying away of waste by waters as a result of flooding.

(310) "Waste boundary" means the outermost perimeter of the waste (projected in the horizontal plane) as it would exist at completion of the disposal activity.

(311) "Waste determination" means performing all applicable procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine whether a hazardous waste meets standards specified in 401 KAR Chapter 35. Examples of a waste

determination include performing the procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine the average VO concentration of a hazardous waste at the point of waste origination; the average VO concentration of a hazardous waste at the point of waste treatment and comparing the results to the exit concentration limit specified for the process used to treat the hazardous waste; determining the organic reduction efficiency and the organic biodegradation efficiency for a biological process used to treat a hazardous waste and comparing the results to the applicable standards; or the maximum volatile organic vapor pressure for a hazardous waste in a tank and comparing the results to the applicable standards.

(312) "Waste pile" shall have the same meaning as "pile".

(313) "Waste stabilization process" means any physical or chemical process used to either reduce the mobility of hazardous constituents in a hazardous waste or eliminate free liquids as determined by Test Method 9095 (Paint Filter Liquids Test) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW-846, Third Edition, September 1986, as amended by Update I, November 15, 1992 (incorporated by reference-refer to § 260.11 of this chapter). A waste stabilization process includes mixing the hazardous waste with binders or other materials, and curing the resulting hazardous waste and binder mixture. Other synonymous terms used to refer to this process are "waste fixation" or "waste solidification."

(314) "Waste" shall have the meaning specified in KRS 224.01-010.

(315) "Wastewaters" means wastes that contain less than one (1) percent by weight total organic carbon (TOC) and less than one (1) percent by weight total suspended solids (TSS), with the following exceptions:

(a) F001, F002, F003, F004, F005, wastewaters are solvent-water mixtures that contain less than one (1) percent by weight TOC or less than one (1) percent by weight total F001, F002, F003, F004, F005 solvent constituents listed in Section 1 of 401 KAR 37:040 in Table Treatment Standards for Hazardous Waste;

(b) K011, K013, K014 wastewaters contain less than five (5) percent by weight TOC and less than one (1) percent by weight TSS, as generated; and

(c) K103 and K104 wastewaters contain less than four (4) percent by weight TOC and less than one (1) percent by weight TSS.

(316) "Wastewater treatment unit" means a device that:

(a) Is part of a wastewater treatment facility that is subject to administrative regulation under either section 402 or 307(b) of the CWA;

(b) Receives and treats or stores an influent wastewater which is a hazardous waste as defined in 401 KAR 31:010, Section 3; or generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in 401 KAR 31:010, Section 3; or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Section 3 of 401 KAR 31:010; and

(c) Meets the definition of tank or tank system in this administrative regulation.

(317) "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

(318) "Water" or "waters of the Commonwealth" shall have the meaning specified in KRS 224.01-010.

(319) "Well" means any shaft or pit dug or bored into the earth, generally of cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(320) "Wetlands" means land that has a predominance of hydric soils and is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(321) "Zone of aeration" means that region of the soil or rock

between the land surface and the nearest saturated zone in which the interstices are occupied partially by air.

(322) "Zone of engineering control" means an area under the control of the owner or operator that upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to waters of the Commonwealth.

(323) "Zone of saturation" means that part of the earth's crust containing groundwater in which all voids, large and small, are filled with liquid.

Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by context, acronyms and abbreviations used in 401 KAR Chapter 39 shall have the meaning as identified in Table 1 of this administrative regulation.

Table 1. Acronyms and Abbreviations.

Am.	Amended
C	Corrosive waste
CAA	Clean Air Act, as amended
CFR	Code of Federal Regulations
cm	Centimeter
cm ²	Centimeter squared
CO	Carbon monoxide
CO ₂	Carbon dioxide
CWA	Clean Water Act, as amended
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980
DOT	United States Department of Transportation
DRE	Destruction and removal efficiency
E	Explosive waste
eff.	Effective
EPA	United States Environmental Protection Agency
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act
FIA	Federal Insurance Administration
FR	Federal Register
H	Acutely hazardous waste
ha	Hectare
HTMR	High temperature metals recovery
HSWA	Hazardous and Solid Waste Amendments of 1994
I	Ignitable waste
KAR	Kentucky Administrative Regulation
kg	Kilogram
KPDES	Kentucky Pollution Discharge Elimination System
KRS	Kentucky Revised Statute
Ky.R.	Administrative Register of Kentucky
l	Liter
LC	Lethal concentration
LD	Lethal dose
ml	Milliliter
mm	Millimeter
N	Normal
NESHAPS	National Emissions Standards for Hazardous Air Pollutants
NPDES	National Pollutant and Discharge Elimination System
PCB	Polychlorinated biphenyl
pCi/l	Picocuries per liter
PHC	Principal hazardous constituent
Permit POHC	Permitted principal organic hazardous constituent
PM	Particulate matter
POHC	Principal organic hazardous constituent
ppm	parts per million
Trial POHC	Trial burn principal organic hazardous constituent

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POTW	Publicly owned treatment works
PSD	Prevention of significant deterioration
psi	Pounds per square inch
psig	Pounds per square inch gauge
R	Reactive waste
RCRA	Resource Conservation and Recovery Act, as amended
SDWA	Safe Drinking Water Act, as amended
SEC	Securities and Exchange Commission
SIC	Standard Industrial Classification Code
SPCC	Spill Prevention, Control, and Countermeasures Plan
T	Toxic waste
UIC	Underground Injection Control
UICP	Underground Injection Control Program
USC	United States Code
U.S. EPA	United States Environmental Protection Agency
USGS	United States Geological Survey
USPS	United States Postal Service

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: This regulation does not affect any entities, because it only defines terms used in the chapter. The regulation was promulgated to comply with KRS 13A.222.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the

extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First Year: The cabinet will experience no additional costs or savings by promulgating the amendments to this regulation.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: There will be no additional factors affecting costs.

b. Reporting and paperwork requirements: There will be no extra paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on the state and local revenue with the promulgation of this regulation.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No costs are imposed with the promulgation of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: There were no other alternatives that would achieve compliance with KRS 13A.222.

8. Assessment of expected benefits of the administrative regulation: The benefit is having the definitions clearly stated at the beginning of each chapter.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Not applicable since no requirements are imposed.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Yes, tiering was applied in this regulation. Based on compliance with KRS 13A.222. Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS

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Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments establish definitions of hazardous waste terms and the clarify certain definitions. This regulation is necessary to maintain consistency between state and federal programs. In addition, the regulation has been modified to reflect regulation construction specified in KRS 13A.222.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that manages hazardous waste.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. This administrative regulation establishes definitions for all terms within 401 KAR Chapter 39. These terms are assimilated from existing state and federal regulatory definitions and existing statutory definitions where applicable.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): Because this administrative regulation only establishes definitions for 401 KAR Chapter 39, this administrative regulation will not affect state, county, or local expenditures.

Other Explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (New Administrative Regulation)

401 KAR 40:001. Definitions related to 401 KAR Chapter 40.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.50, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520, 224.46-530, 224.99-010

NECESSITY AND FUNCTION: This chapter establishes standards for enforcement and compliance monitoring of hazardous waste and solid waste management and practices. This administrative regulation defines essential terms that are used in this chapter.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or otherwise specifically indicated by context, terms in 401 KAR Chapter 40 shall have the meanings given in this Section.

(1) "Cabinet" shall have the meaning specified in KRS 224.01-010.

(2) "Contamination" means the degradation of naturally occurring water, air, or soil quality either directly or indirectly as a result of human activities.

(3) "Hazardous waste" shall have the meaning specified in KRS 224.01-010.

(4) "Operator" means any person responsible for overall operation of an on-site or off-site waste facility, including any private contractor conducting operational activities at a federal facility.

(5) "Owner" means any person who owns an on-site or off-site waste facility, or any part of a facility.

(6) "Permittee" means any person holding a valid permit issued by the cabinet to manage, treat, store, or dispose of waste.

(7) "Person" shall have the meaning specified in KRS 224.01-010.

(8) "Secretary" shall have the meaning specified in KRS 224.01-010.

(9) "Solid waste" shall have the same meaning as KRS 224.01-010.

Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by context, acronyms and abbreviations used in 401 KAR Chapter 40 shall have the meaning as identified in Table 1 of this administrative regulation.

Table 1. Acronyms and Abbreviations.

KAR	Kentucky Administrative Regulation
KRS	Kentucky Revised Statute

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by

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August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: This regulation does not affect any entities, because it only defines terms used in the chapter. The regulation was promulgated to comply with KRS 13A.222.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The cabinet will experience no additional costs or savings by promulgating the amendments to this regulation.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: There will be no additional factors affecting costs.

b. Reporting and paperwork requirements: There will be no extra paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on the state and local revenue with the promulgation of this regulation.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No costs are imposed with the promulgation of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: There were no other alternatives that would achieve compliance with KRS 13A.222.

8. Assessment of expected benefits of the administrative regulation: The benefit is having the definitions clearly stated at the beginning of each chapter.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Not applicable since no requirements are imposed.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Tiering is applied to all of Kentucky's waste regulations, based on type and quantity of waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments establish definitions of waste terms and the clarify certain definitions. This regulation is necessary to maintain consistency between state and federal programs. In addition, the regulation has been modified to reflect regulation construction specified in KRS 13A.222.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that manages hazardous waste.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. This administrative regulation establishes definitions for all terms within 401 KAR Chapter 40. These terms are assimilated from existing state and federal regulatory definitions and existing statutory definitions where applicable.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): Because this administrative regulation only establishes definitions for 401 KAR Chapter 40, this administrative regulation will not affect state, county, or local expenditures.

Other Explanation: None

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(New Administrative Regulation)**

401 KAR 43:005. Definitions related to 401 KAR Chapter 43.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 40 CFR 273.6

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510

NECESSITY AND FUNCTION: This chapter establishes minimum standards for persons who generate, handle, transport or receive universal waste. This administrative regulation defines essential terms that are used in this chapter.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or otherwise specifically indicated by context, terms in 401 KAR Chapter 43 shall have the meanings given in this section.

(1) "100-year floodplain" means any land area which is subject to a one (1) percent or greater chance of flooding in any given year from any source.

(2) "100-year flood" means a flood that has a one (1) percent chance of being equaled or exceeded in any given year.

(3) "Aboveground tank" means a device meeting the definition of "tank" and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

(4) "Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

(5) "Accumulated speculatively" means that a material is accumulated before being recycled.

(a) A material is not accumulated speculatively, if the person accumulating it can show:

1. That the material is potentially recyclable and has a feasible means of being recycled; and

2. That - during the calendar year (commencing on January 1) - the amount of material that is recycled, or transferred to a different site for recycling, equals at least seventy-five (75) percent by weight or volume of the amount of that material accumulated at the beginning of the calendar year (including any material accumulated from previous years).

(b) In calculating the percentage of turnover, the seventy-five (75) percent requirement is to be applied to each material of the same type that is recycled in the same way. Materials accumulating in units that would be exempt from administrative regulation under Section 4(3) of 401 KAR 31:010 are not to be included in making the calculation. (Materials that are already defined as wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling.

(6) "Active fault" means a land area which, according to the weight of geological evidence, has a reasonable probability of being affected by movement along a fault to the extent that a waste site or facility would be damaged and thereby pose a threat to human health and the environment.

(7) "Active life" of a facility means the period from the initial receipt of waste at a waste site or facility until the cabinet receives certification of final closure.

(8) "Active portion" means any area of a facility where treatment, storage, or disposal operations are being or have been conducted and which have not been closed. It includes the treated area of a landfill and the active face of a landfill. Covered, closed, or inactive portions of landfills, building roofs, and roads are excluded unless designated as "active portions" by the cabinet.

(9) "Admixed liner" means a liner made from a mixture of any of a multitude of materials, often asphalt or cement, with widely varying physical and chemical properties. Admixed liners shall be demonstrated to be structurally sound and chemically resistant to the waste placed in it so as to be capable of supporting the waste without cracking or disintegrating or allowing waste or leachate to escape.

(10) "Agricultural waste" means any nonhazardous waste resulting from the production and processing of on-the-farm agricultural products, including manures, prunings and crop residues.

(11) "Air stripping operation" is a desorption operation employed to transfer one (1) or more volatile components from a liquid mixture into a gas (air) either with or without the application of heat to the liquid. Packed towers, spray towers, and bubble-cap, sieve, or valve-type plate towers are among the process configurations used for contacting the air and a liquid.

(12) "Ampule" means a small sealed glass container for one (1) dose of sterile medicine.

(13) "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to hazardous waste management units including tanks between hazardous waste storage and treatment tanks to a point of disposal on site, or to a point of shipment for disposal off site.

(14) "Application" means the form approved by the cabinet for applying for a permit, including any additions, revisions or modifications and any narrative and drawings required by 401 KAR Chapters 30 to 48. The term includes: Part A of the application (Part A); Part B of the application (Part B); notice of intent; administration application; special waste application; or technical application.

(15) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(16) "As received waste" refers to the waste as received in the shipment from the generator or sample collector.

(17) "Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

(18) "Attenuation" means any decrease in the maximum concentration or total quantity of an applied chemical or biological constituent in a fixed time or distance traveled resulting from a physical, chemical, or biological reaction or transformation occurring in the zone of aeration or zone of saturation.

(19) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit or part of a facility, such as the plant manager, superintendent, or person of equivalent responsibility.

(20) "Average volatile organic concentration" or "average VO concentration" means the mass-weighted average volatile organic concentration of a hazardous waste as determined in accordance with the requirements of Section 4 of 401 KAR 35:281.

(21) "Base flood" means a flood that has a one (1) percent or greater chance of recurring in any year, or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

(22) "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

(23) "Board" shall have the meaning specified in KRS 224.46-810.

(24) "Bodily injury" shall have the meaning given by applicable Kentucky statutes. Bodily injury does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for bodily injury.

(25) "Boiler" means an enclosed device using control flame combustion and having the following characteristics:

(a) 1. The unit shall have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

2. The unit's combustion chamber and primary energy recovery section(s) shall be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section (such as water walls and superheaters) shall be physically formed into one (1) manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream) and fluidized bed combustion units; and

3. While in operation, the unit shall maintain a thermal energy recovery efficiency of at least sixty (60) percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

4. The unit shall export and utilize at least seventy-five (75) percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(b) The unit is one (1) which the cabinet has determined, on a case-by-case basis, to be a boiler, after considering the standards in 401 KAR 30:080.

(26) "Bottoms receiver" means a container or tank used to receive and collect heavier bottoms fractions of the distillation feed stream that remain in the liquid phase.

(27) "Burn" means burning for energy recovery or destruction, or processing for materials recovery or as an ingredient.

(28) "By-product" is a material that is not one (1) of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a coproduct that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

(29) "Cabinet" shall have the meaning specified in KRS 224.01-010.

(30) "Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

(31) "Cation exchange capacity" means the sum of exchangeable cations a soil can absorb expressed in milliequivalents per 100 grams of soil as determined by sampling the soil to the depth of cultivation or solid waste placement, whichever is greater, and analyzing by the summation method for distinctly acid soils or the sodium acetate method for neutral, calcareous, or saline soils.

(32) "Certificate" shall have the meaning specified in KRS 224.46-810.

(33) "Certification" means a statement of professional opinion based upon knowledge and belief.

(34) "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements.

(35) "Closed-vent system" means a system that is not open to the atmosphere and that is composed of piping, connections, and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device.

(36) "Closure plan" means the plan for closure prepared in accordance with the requirements of Section 3 of 401 KAR 34:070 or Section 3 of 401 KAR 35:070.

(37) "Closure" shall have the meaning specified in KRS 224.01-010.

(38) "Component" means either the tank or ancillary equipment of a tank system.

(39) "Condenser" means a heat-transfer device that reduces a thermodynamic fluid from its vapor phase to its liquid phase.

(40) "Conditionally exempt small quantity generator" means:

(a) A generator who generates no more than 100 kilograms of hazardous waste in a calendar month; and

(b) A generator who generates acutely hazardous waste listed in Sections 2, 3, and 4(5) of 401 KAR 31:040 in a calendar month in quantities greater than one (1) kilogram. All quantities of that acutely hazardous waste are subject to administrative regulation under 401 KAR Chapters 32 through 39, and the notification and permitting requirements of KRS 224.01-400, 224.40-310, 224.46-510, 224.46-580, and 224.50-130 to 224.50-413.

(41) "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(42) "Connector" means flanged, screwed, welded, or other joined fitting used to connect two (2) pipelines or a pipeline and a piece of equipment. For the purposes of reporting and recordkeeping, connector means flanged fittings that are not covered by insulation or other materials that prevent location of the fittings.

(43) "Consignee" means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste is sent.

(44) "Constituent" shall have the same meaning as "hazardous waste constituent."

(45) "Container" means any portable device in which hazardous waste is transported, stored, treated, or otherwise handled, and includes transport vehicles that are containers themselves (for example, tank trucks, tanker-trailers, and rail tank cars), and containers placed on or in a transport vehicle.

(46) "Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of 401 KAR 34:245 or 35:245.

(47) "Contaminate" means introduce a substance that would cause:

(a) The concentration of that substance in the groundwater to exceed the maximum contaminant level specified in 401 KAR 30:031, Sections 5 and 6 of 401 KAR 47:030, or Section 8 of 401 KAR 34:060;

(b) An increase in the concentration of that substance in the groundwater where the existing concentration of that substance exceeds the maximum contaminant level specified in 401 KAR 30:031, 401 KAR 47:030, or Section 8 of 401 KAR 34:060; or

(c) A significant increase above established background levels, for substances that do not have an established maximum contamination level.

(48) "Contamination" means the degradation of naturally occurring water, air, or soil quality either directly or indirectly as a result of human activities.

(49) "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in the event of a fire, explosion, or release of waste or waste constituents into the environment which has the potential for endangering human health and the environment. Financial planning to identify resources for initiation of such action is a part of contingency plan development.

(50) "Continuous recorder" means a data recording device recording an instantaneous data value at least once every 15 minutes.

(51) "Control device shutdown" means the cessation of operation of a control device for any purpose.

(52) "Control device" means an enclosed combustion device,

vapor recovery system, or flare. Any device the primary function of which is the recovery or capture of solvents or other organics for use, reuse, or sale (for example, a primary condenser on a solvent recovery unit) is not a control device.

(53) "Corrective action management unit" or "CAMU" means an area within a facility that is designated by the cabinet under 401 KAR 34:287, for the purpose of implementing corrective action requirements under Section 12 of 401 KAR 34:060 and KRS 224.46-520. A CAMU shall only be used for the management of remediation wastes pursuant to implementing such corrective action requirements at the facility.

(54) "Cover" means a device or system which is placed on or over a hazardous waste such that the entire hazardous waste surface area is enclosed and sealed to reduce air emissions to the atmosphere. A cover may have openings such as access hatches, sampling ports, and gauge wells that are necessary for operation, inspection, maintenance, or repair of the unit on which the cover is installed provided that each opening is closed and sealed when not in use. Examples of covers include a fixed roof installed on a tank, a floating membrane cover installed on a surface impoundment, a lid installed on a drum, and an enclosure in which an open container is placed during waste treatment.

(55) "Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(56) "Current closure and postclosure cost estimates" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:090 or Section 1(1), (2) and (3) of 401 KAR 35:090.

(57) "Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

(58) "Current plugging and abandonment cost estimates" as used in subsection (1) of this section refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer (see 40 CFR 144.70(f)).

(59) "Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 40 CFR 144.62(a), (b), and (c).

(60) "Current postclosure cost estimate" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:100 or Section 1(1), (2) and (3) of 401 KAR 35:100.

(61) "Debris" means solid material exceeding a 60mm particle size that is intended for disposal and that is: a manufactured object; plant or animal matter; or natural geologic material. However, the following materials are not debris: Any material for which a specific treatment standard is provided in 401 KAR 37:040, namely lead acid batteries, cadmium batteries, and radioactive lead soils; Process residuals such as smelter slag and residues from the treatment of waste, wastewater, sludges, or air emission residues; and Intact containers of hazardous waste that are not ruptured and that retain at least 75% of their original volume. A mixture of debris that has not been treated to the standards provided by Section 6 of 401 KAR 37:040 and other material is subject to regulation as debris if the mixture is comprised primarily of debris, by volume, based on visual inspection.

(62) "Designated facility" means a hazardous waste treatment, storage, or disposal facility which:

(a) Has received a hazardous waste site or facility permit (or a facility with interim status) in accordance with the requirements of 401 KAR Chapter 38;

(b) Has received a permit from a state authorized in accordance with 40 CFR Part 271, and EPA permit (or a facility with interim status) in accordance with 40 CFR Parts 270 and 124; or

(c) Is regulated under Section 6(3)(b) of 401 KAR 31:010 or 401 KAR Chapter 36, 40 CFR 261.6(c)(2) or 40 CFR Part 266, and that

has been designated on the manifest by the generator pursuant to Section 1 of 401 KAR 32:020. If a waste is destined to a hazardous waste site or facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility shall be a facility allowed by the receiving state to accept that waste.

(63) "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in Section 4(1) and (3) of 401 KAR 43:020 and Section 4(1) and (3) of 401 KAR 43:030. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

(64) "Destruction or adverse modification" means an alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

(65) "Dike" means an embankment or ridge of either natural or manmade materials used to prevent the movement of liquids, sludges, solids, or other materials.

(66) "Direct transfer equipment" means any device (including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps) that is used to distribute, meter, or control the flow of hazardous waste between a container (for example, transport vehicle) and a boiler or industrial furnace.

(67) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

(68) "Disposal" shall have the meaning specified in KRS 224.01-010.

(69) "Distillate receiver" means a container or tank used to receive and collect liquid material (condensed) from the overhead condenser of a distillation unit and from which the condensed liquid is pumped to larger storage tanks or other process units.

(70) "Distillation operation" means an operation, either batch or continuous, separating one (1) or more feed stream(s) into two (2) or more exit streams, each exit stream having component concentrations different from those in the feed stream(s). The separation is achieved by the redistribution of the components between the liquid and vapor phase as they approach equilibrium within the distillation unit.

(71) "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(72) "Double block and bleed system" means two (2) block valves connected in series with a bleed valve or line that can vent the line between the two (2) block valves.

(73) "Draft permit" shall have the same meaning as "proposed permit".

(74) "Drip pad" means an engineered structure consisting of a curbed, free-draining base, constructed of nonearthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(75) "Effluent Limitations" shall have the same meaning as KRS 224.01-010.

(76) "Elementary neutralization unit" means a device which:

(a) Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in Section 3 of 401 KAR 31:030, or they are listed in 401 KAR 31:040 only for this reason; and

(b) Meets the definition of tank, tank system, container, transport vehicle, or vessel in this section.

(77) "Emergency permit" means a permit issued by the cabinet to temporarily store, treat or dispose of hazardous waste in accordance with the provisions of Section 2 of 401 KAR 38:060, to temporarily manage, process, or dispose of a solid waste in accordance with the

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provisions of Section 2 of 401 KAR 47:150 or to temporarily store, treat, or dispose of special waste in accordance with the provisions of Section 1 of 401 KAR 45:135.

(78) "Endangered or threatened species" means any species listed as such pursuant to Section 4 of the Endangered Species Act, as amended, 16 USC 1536.

(79) "Engineer" shall have the meaning specified in KRS 322.010. An independent, professional engineer shall be registered in Kentucky pursuant to KRS 322.040 and shall be qualified to engage in waste management engineering practices.

(80) "EPA acknowledgment of consent" means the cable sent to EPA from the U.S. Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

(81) "EPA hazardous waste number" means the number assigned by EPA and the cabinet to each hazardous waste listed in 401 KAR 31:040, and to each characteristic identified in 401 KAR 31:030.

(82) "EPA identification number" means the number assigned by EPA or the cabinet to each generator; transporter; or treatment, storage, or disposal facility.

(83) "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice and which has a channel bottom that is always above the local water table.

(84) "Equipment" means each valve, pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, or flange, and any control devices or systems required by this administrative regulation.

(85) "Equivalent method" means any testing or analytical method, approved jointly by the administrator and the secretary under 401 KAR Chapter 31, or methods in 401 KAR Chapters 47 and 48, approved by the secretary of the cabinet.

(86) "Existing" indicates a boiler or industrial furnace that on or before August 21, 1991 is either in operation burning, or processing hazardous waste or for which construction (including the ancillary facilities to burn or to process the hazardous waste) has commenced.

(87) "Existing component" shall have the same meaning as "existing tank system."

(88) "Existing facility" shall have the same meaning as "existing hazardous waste site or facility".

(89) "Existing hazardous waste site or facility" means a hazardous waste facility which was in operation, or for which continuous construction had commenced, on or before November 19, 1980. A facility has commenced construction if:

(a) The owner or operator had obtained the federal, state and local approvals or permits necessary to begin physical construction; and

(b) Either:

1. A continuous on-site, physical construction program has begun; or

2. The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the facility to be completed within a reasonable time.

(90) "Existing portion" means that land surface area of an existing hazardous waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

(91) "Existing tank system" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(a) A continuous on-site physical construction or installation

program has begun; or

(b) The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the site or installation of the tank system to be completed within a reasonable time.

(92) "External floating roof" means a pontoon or double-deck type floating roof that rests on the surface of a hazardous waste being managed in a tank that has no fixed roof.

(93) "Face amount" means the total amount the insurer is obligated to pay under the policy.

(94) "Facility" means:

(a) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).

(b) For the purpose of implementing corrective action under Section 12 of 401 KAR 34:060, all contiguous property under the control of the owner or operator seeking a hazardous waste permit. This definition also applies to facilities implementing corrective action under KRS 224.46-520.

(95) "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation, and the United States Government Printing Office.

(96) "Federal, state, and local approvals or permits necessary to begin physical construction" means permits and approvals required under federal, state, or local hazardous waste control statutes, administrative regulations, or ordinances.

(97) "Final closure" of a hazardous waste site or facility means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under 401 KAR Chapters 34 and 35 are no longer conducted at the facility unless subject to the provisions in Section 5 of 401 KAR 32:030.

(98) "First attempt at repair" means to take rapid action for the purpose of stopping or reducing leakage of organic material to the atmosphere using best practices.

(99) "Fiscal year" means a twelve (12) month period for accounting and other financial purposes.

(100) "Fixed roof" means a rigid cover that is installed in a stationary position so that it does not move with fluctuations in the level of the hazardous waste placed in a tank.

(101) "Flame zone" means the portion of the combustion chamber in a boiler occupied by the flame envelope.

(102) "Floating membrane cover" means a cover consisting of a synthetic flexible membrane material that rests upon and is supported by the hazardous waste being managed in a surface impoundment.

(103) "Floating roof" means a pontoon-type or double-deck type cover that rests upon and is supported by the hazardous waste being managed in a tank, and is equipped with a closure seal or seals to close the space between the cover edge and the tank wall.

(104) "Flood plain" means areas adjoining inland waters which are inundated by the base flood, unless otherwise specified in 401 KAR 30:031 or 401 KAR 47:030, and includes: 100-year floodplain and floodway.

(105) "Floodway" means the channel of the waterway, stream or river and that portion of the adjoining floodplain which provides for passage of the 100-year flood flow without increasing the floodwater depth across the 100-year floodplain by more than one (1) foot.

(106) "Flow indicator" means a device that indicates whether gas flow is present in a vent stream.

(107) "Food chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(108) "Fractionation operation" means a distillation operation or method used to separate a mixture of several volatile components of

different boiling points in successive stages, each stage removing from the mixture some proportion of one of the components.

(109) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(110) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.

(111) "Generator" shall have the meaning specified in KRS 224.01-010.

(112) "Governing body" shall have the same meaning as KRS 224.01-010.

(113) "Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.

(114) "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table, and perched water zones below the B-soil horizon, including water circulating through fractures, bedding planes, and solution conduits.

(115) "Halogenated organic compounds" or "HOCs" means those compounds having a carbon-halogen bond that are listed under 401 KAR 37:110.

(116) "Hazardous constituent" shall have the meaning specified in KRS 224.01-010.

(117) "Hazardous waste constituent" means a constituent which caused the cabinet to list the hazardous waste in 401 KAR 31:040, or a constituent listed in Section 5(3) of 401 KAR 31:030.

(118) "Hazardous waste management unit shutdown" means a work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit. An unscheduled work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit for less than twenty-four (24) hours is not a hazardous waste management unit shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping operation are not hazardous waste management unit shutdowns.

(119) "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed. Hazardous waste management units include: aboveground tank; component; existing tank system or existing component; in-ground tank; new tank system or new tank component; on-ground tank; tank system; underground tank; or unfit-for-use tank system.

(120) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

(121) "Hazardous waste site or facility" means any place at which hazardous waste is treated, stored, or disposed of by landfilling, incineration, or any other method. Hazardous waste site or facility includes: boiler; disposal facility; elementary neutralization unit; incinerator; industrial furnace; hazardous waste transfer facility; injection well; landfill; land treatment facility; miscellaneous unit; pile or waste pile; replacement unit; storage facility; sludge dryer; surface impoundment; tank; thermal treatment facility; totally enclosed treatment facility; treatment facility; or wastewater treatment unit.

(122) "Hazardous waste transfer facility" means any transportation related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

(123) "Hazardous waste" shall have the meaning specified in KRS 224.01-010.

(124) "Holocene" means the most recent epoch of the quaternary period, extending from the end of the pleistocene to the present.

(125) "Hot well" means a container for collecting condensate as in a steam condenser serving a vacuum-jet or steam-jet ejector.

(126) "Household waste" means any waste material (including garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

(127) "In existence" shall have the same meaning as "existing."

(128) "In gas service" means that the piece of equipment contains or contacts a hazardous waste stream that is in the gaseous state at operating conditions.

(129) "In heavy liquid service" means that the piece of equipment is not in gas service or in vapor service or in light liquid service.

(130) "In light liquid service" means that the piece of equipment contains or contacts a waste stream where the vapor pressure of one (1) or more of the components in the stream is greater than three-tenths (0.3) kilopascals (kPa) at twenty (20) degrees Centigrade, the total concentration of the pure components having a vapor pressure greater than three-tenths (0.3) kPa at twenty (20) degrees Centigrade is equal to or greater than twenty (20) percent by weight, and the fluid is a liquid at operating conditions.

(131) "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

(132) "In situ sampling systems" means nonextractive samplers or in-line samplers.

(133) "In vacuum service" means that equipment is operating at an internal pressure that is at least 5 kPa below ambient pressure.

(134) "In vapor service" shall have the same meaning as "in gas service."

(135) "In-ground tank" means a device meeting the definition of "tank" in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(136) "Inactive portion" means that portion of a hazardous waste site or facility which was not operated after November 19, 1980.

(137) "Incinerator" means any enclosed device that:

(a) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(b) Meets the definition of infrared incinerator or plasma arc incinerator.

(138) "Incompatible waste" means a hazardous waste which is unsuitable for placement in a particular device or facility because it may cause corrosion or decay of containment materials, or unsuitable for commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(139) "Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

(140) "Individual generation site" means the contiguous site at or on which one (1) or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one (1) or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

(141) "Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

- (a) Cement kilns;
- (b) Lime kilns;
- (c) Aggregate kilns;
- (d) Phosphate kilns;

- (e) Coke ovens;
- (f) Blast furnaces;
- (g) Smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);
- (h) Titanium dioxide chloride process oxidation reactors;
- (i) Methane reforming furnaces;
- (j) Pulping liquor recovery furnaces;
- (k) Combustion devices used in the recovery of sulfur values from spent sulfuric acid;
- (l) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least three (3) percent, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of twenty (20) percent as generated; or
- (m) Other devices as the cabinet may, after notice and comment, add to this list on the basis of criteria and Section 5 of 401 KAR 30:080.
- (142) "Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.
- (143) "Injection well" means a well into which fluids are injected to achieve subsurface emplacement.
- (144) "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained hazardous waste or reagents used to treat the hazardous waste.
- (145) "Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of a hazardous waste management unit including tank systems.
- (146) "Interim status" means the designation of a hazardous waste site or facility which was in existence on November 19, 1980, and has submitted a Part A application under 401 KAR Chapter 38 or under 40 CFR Part 270 and is treated as having a permit until final administrative disposition of the application is made.
- (147) "Intermittent stream" means a stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year.
- (148) "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.
- (149) "Internal floating roof" means a floating roof that rests or floats on the surface (but not necessarily in complete contact with it) of a hazardous waste being managed in a tank that has a fixed roof.
- (150) "IUC well" means a underground injection control well as provided in 40 CFR Part 144.
- (151) "Karst terrain" means a type of topography where limestone, dolomite or gypsum is present and is characterized by naturally occurring closed topographic depressions or sinkholes, caves, disrupted surface drainage, and well developed underground solution channels formed by dissolution of these rocks by water moving underground.
- (152) "Key personnel" shall have the meaning specified in KRS 224.01-010.
- (153) "Lab pack" means any large container equal to or smaller than fifty-five (55) gallons that holds many smaller containers of various content tightly secured with packing material.
- (154) "Lamp" means the bulb or tube portion of a lighting device specifically designed to produce radiant energy, most often in the ultraviolet (UV), visible, and infra-red (IR) regions of the electromagnetic spectrum. Examples of common lamps include, but is not limited to, incandescent, fluorescent, high pressure sodium, mercury vapor,

metal halide, high intensity discharge, and neon lamps.

(155) "Land disposal" shall have the meaning specified in KRS 224.01-010.

(156) "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface. These facilities are disposal facilities if the waste will remain after closure.

(157) "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

(158) "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(159) "Large quantity handler of universal waste" means a universal waste handler who accumulates 5,000 kilograms or more total universal waste (batteries, lamps, pesticides, or thermostats, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total of universal waste is accumulated.

(160) "Leachate" means any liquid including any suspended components in the liquid, that has percolated through or drained from waste.

(161) "Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment system or the presence of a release of hazardous waste, hazardous waste constituents or accumulated liquid in the secondary containment system. Such a system shall employ operational controls (daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment system or the presence of a release of hazardous waste constituents or accumulated liquids into the secondary containment system.

(162) "Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

(163) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(164) "Liner" means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, ground water, or surface water at any time during the active life of the facility.

(165) "Liquid-mounted seal" means a foam or liquid-filled primary seal mounted in contact with the hazardous waste between the tank wall and the floating roof continuously around the circumference of the tank.

(166) "Local government" means the fiscal court of the county, urban-county government, or governing body of an incorporated municipality wherein a hazardous waste landfill or other site or facility for the land disposal of hazardous waste is proposed.

(167) "Major modification" means for hazardous waste sites or facilities, a change in ownership where the cabinet determines that other changes in the permit are necessary as a result of the change in ownership or operational control, area occupied, disposal method, or other significant change in the operation of a waste site or facility (Note: Minor modifications are described in Section 3 of 401 KAR 38:040).

(168) "Malfunction" means any sudden failure of a control device or a hazardous waste management unit or failure of a hazardous

waste management unit to operate in a normal or usual manner, so that organic emissions are increased.

(169) "Manifest document number" means the EPA twelve (12) digit identification number assigned to the generator plus a unique, serially increasing, five (5) digit document number assigned to the manifest by the generator for recordkeeping and reporting purposes.

(170) "Manifest" shall have the meaning specified in KRS 224.01-010.

(171) "Maximum organic vapor pressure" means the equilibrium partial pressure exerted by the hazardous waste contained in a tank determined at the temperature equal to either: (1) the local maximum monthly average temperature as reported by the National Weather Service when the hazardous waste is stored or treated at ambient temperature; or (2) the highest calendar-month average temperature of the hazardous waste when the hazardous waste is stored at temperatures above the ambient temperature or when the hazardous waste is stored or treated at temperatures below the ambient temperature.

(172) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

(173) "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of, and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR Part 146, containment building, corrective action management unit, or unit eligible for a research, development, and demonstration permit under Section 6 of 401 KAR 38:060.

(174) "Monitoring well" means a well used to obtain water samples for water quality and quantity analysis and groundwater levels.

(175) "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.

(176) "Movement" means that hazardous waste transported to a facility in an individual vehicle.

(177) "Net working capital" means current assets minus current liabilities.

(178) "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

(179) "New tank component" shall have the same meaning as "new tank system".

(180) "New tank system" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation commenced after July 14, 1986; however, for purposes of Section 4(7)(b) of 401 KAR 34:190 and Section 4(7)(b) of 401 KAR 35:190, a new tank system is one for which construction commenced after July 14, 1986.

(181) "New" means any hazardous waste site or facility that commenced construction after November 19, 1980.

(182) "No detectable organic emissions" means no escape of organics from a device or system to the atmosphere as determined by an instrument reading less than 500 parts per million by volume (ppmv) above the background level at each joint, fitting, and seal when measured in accordance with the requirements of Method 21 in 40 CFR part 60, appendix A, and by no visible openings or defects in the device or system such as rips, tears, or gaps.

(183) "Nonsudden accidental occurrence" means an occurrence that takes place over time and involves continuous or repeated exposure.

(184) "Nonwastewaters" means wastes that do not meet the criteria for wastewaters found in the definition for wastewaters.

(185) "Not detected" means at or below the lower method calibration limit (MCL) in SW-846, Method 8290, Table 1.

(186) "Off-site" means properties noncontiguous to the site.

(187) "On-site" means on the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing, as opposed to going along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access is also considered on-site property.

(188) "Onground tank" means a device meeting the definition of tank that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(189) "Open burning" means the combustion of any material or solid waste without:

(a) Control of combustion air to maintain adequate temperature for efficient combustion;

(b) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(c) Control of emission of the gaseous combustion products.

(190) "Open-ended valve or line" means any valve, except pressure relief valves, having one (1) side of the valve seat in contact with process fluid and one (1) side open to the atmosphere, either directly or through open piping.

(191) "Operational plan" means the approved plan of operations filed with the cabinet which describes the method of operation that the permittee will use in the treatment, storage, or disposal of wastes.

(192) "Operator" means any person responsible for overall operation of an on-site or off-site waste facility, including any private contractor conducting operational activities at a federal facility.

(193) "Other site or facility for the land disposal of hazardous waste" means a disposal facility but shall not include a storage facility or a treatment facility.

(194) "Owner" means any person who owns an on-site or off-site waste facility, or any part of a facility.

(195) "Parent corporation" means a corporation which directly owns at least fifty (50) percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

(196) "Part A of the application" or "Part A" means the standard forms or format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:080.

(197) "Part B of the application" or "Part B" means the standard format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:090 to 401 KAR 38:210.

(198) "Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of 401 KAR Chapters 34 and 35 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

(199) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface run-off. The term does not include "intermittent stream" or "ephemeral stream".

(200) "Permit by rule" means authorization allowing certain classes of sites or facilities to manage waste consistent with 401 KAR Chapters 30 to 49, without submission of a registration or permit application to the cabinet. Examples of hazardous waste sites or facilities which are permitted by rule include facilities operating under an interim status permit and facilities identified in Section 1 of 401 KAR 38:060.

(201) "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management administrative regulations. The term permit includes

permit-by-rule, registered permit-by-rule, research, development, and demonstration permit, and emergency permit. However, the term permit does not include draft permit or proposed permit.

(202) "Permittee" means any person holding a valid permit issued by the cabinet to manage, treat, store, or dispose of waste.

(203) "Person" shall have the meaning specified in KRS 224.01-010.

(204) "Personnel" or "facility personnel" means all persons who work at or oversee the operations of a waste facility, and whose actions or failure to act may result in noncompliance with the requirements of the waste management administrative regulations.

(205) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(a) Is a new animal drug under FFDCA section 201(w), or

(b) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or

(c) Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by paragraph (a) or (b) of this subsection.

(206) "Pile" or "waste pile" means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

(207) "Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame and which is not listed as an industrial furnace.

(208) "Point of compliance" means for solid waste site and facilities, groundwater monitoring wells located within 250 feet of the waste boundary as approved by the cabinet.

(209) "Point of waste origination" means as follows:

(a) When the facility owner or operator is the generator of the hazardous waste, the point of waste origination means the point where a solid waste produced by a system, process, or waste management unit is determined to be a hazardous waste as defined in 40 CFR part 261.

(b) When the facility owner and operator are not the generator of the hazardous waste, point of waste origination means the point where the owner or operator accepts delivery or takes possession of the hazardous waste.

(210) "Point of waste treatment" means the point where a hazardous waste exits a waste management unit used to destroy, degrade, or remove organics in the hazardous waste.

(211) "Point source" means any discernible, confined, and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(212) "Pollutant" shall have the same meaning as KRS 224.01-010.

(213) "Polychlorinated biphenyls" or "PCB" means halogenated organic compounds defined in accordance with 40 CFR 761.2 as of July 1989.

(214) "Postclosure care" means the manner in which a facility shall be maintained when it no longer accepts waste for disposal.

(215) "Postclosure monitoring and maintenance" shall have the meaning specified in KRS 224.01-010.

(216) "Postclosure plan" means the plan for postclosure care prepared in accordance with the requirements of Sections 8 to 11 of 401 KAR 34:070 or Sections 8 to 11 of 401 KAR 35:070.

(217) "Pressure release" means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device.

(218) "Primary exporter" means any person who is required to

originate the manifest for a shipment of hazardous waste in accordance with Section 1 of 401 KAR 32:020 which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

(219) "Process heater" means a device that transfers heat liberated by burning fuel to fluids contained in tubes, including all fluids except water that are heated to produce steam.

(220) "Process vent" means any open-ended pipe or stack that is vented to the atmosphere either directly, through a vacuum-producing system, or through a tank (distillate receiver, condenser, bottoms receiver, surge control tank, separator tank, or hot well) associated with hazardous waste distillation fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations.

(221) "Property damage" shall have the meaning given by applicable Kentucky statutes. Property damage does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for property damage.

(222) "Proposed permit" means a document prepared by the cabinet indicating the cabinet's tentative decision to issue or deny, modify, revoke or terminate a permit.

(223) "Publicly owned treatment works" or "POTW" shall have the meaning specified in KRS 224.01-010.

(224) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump.

(225) "Qualified groundwater scientist" means a geologist registered in Kentucky who has received a baccalaureate or postgraduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields to enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

(226) "Receiving country" means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal (except short-term storage incidental to transportation).

(227) "Recharge zone" means an area supplying the water which enters an underground drinking water source.

(228) "Reclaimed" means a material that is processed to recover a usable product, or that is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents.

(229) "Recovered material" shall have the meaning specified in KRS 224.01-010.

(230) "Recyclable materials" means hazardous wastes that are recycled.

(231) "Recycled" means a material that is used, reused, or reclaimed.

(232) "Recycling" shall have the meaning specified in KRS 224.01-010.

(233) "Regional integrated waste treatment and disposal demonstration facility" shall have the meaning specified in KRS 224.01-010.

(234) "Regulated unit" means hazardous waste land disposal sites or facilities, or portions of existing hazardous waste land disposal sites or facilities that continued to receive waste after January 26, 1983.

(235) "Remediation waste" means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under Section 12 of 401 KAR 34:060 and KRS 224.46-520. For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing KRS 224.46-520 for releases beyond the facility boundary.

(236) "Repaired" means that equipment is adjusted, or otherwise altered, to eliminate a leak.

(237) "Replacement unit" means a landfill, surface impoundment,

or waste pile unit from which all or substantially all of the waste is removed, and that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or approved corrective action.

(238) "Representative sample" means a sample of a universe or whole (for example, waste pile, lagoon, or groundwater) which can be expected to exhibit the average properties of the universe or whole.

(239) "Research, development, and demonstration permit" means a permit issued by the cabinet for a hazardous waste treatment facility that utilizes an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under 401 KAR Chapters 34 through 36.

(240) "Resource recovery" means the recovery of material or energy from waste.

(241) "Run-off" means any rainwater, leachate, or other liquid that drains overland from any part of a facility.

(242) "Run-on" means any rainwater, leachate, or other liquid that drains overland onto any part of a facility.

(243) "Saturated zone" shall have the same meaning as "zone of saturation".

(244) "Schedule of compliance" means a schedule of remedial measures included in a permit or cabinet order, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with KRS Chapter 224 and 401 KAR Chapters 30 to 49.

(245) "Scrap metal" is bits and pieces of metal parts (for example, bars, turnings, rods, sheets, or wire) or metal pieces that may be combined together with bolts or soldering (for example, radiators, scrap automobiles, or railroad boxcars), which when worn or superfluous can be recycled.

(246) "Secretary" shall have the meaning specified in KRS 224.01-010.

(247) "Sensor" means a device that measures a physical quantity or the change in a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

(248) "Separator tank" means a device used for separation of two immiscible liquids.

(249) "Sewage system" shall have the meaning specified in KRS 224.01-010.

(250) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the waste facility or activity.

(251) "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 BTU per pound of sludge treated on a wet-weight basis.

(252) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.

(253) "Small quantity generator" means a generator who generates more than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month.

(254) "Small quantity handler of universal waste" means a universal waste handler who does not accumulate more than 5,000 kilograms of universal waste (batteries, lamps, pesticides, or thermostats, collected collectively) at any time.

(255) "Solid waste management unit" shall mean any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at a facility at which solid wastes have been routinely and systematically released.

(256) "Solvent extraction operation" means an operation or method of separation in which a solid or solution is contacted with a liquid solvent (the two (2) being mutually insoluble) to preferentially dissolve and transfer one (1) or more components into the solvent.

(257) "Sorb" means to either adsorb, absorb, or both.

(258) "Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both.

(259) "Spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

(260) "Spill" means any accidental spilling, leaking, pumping, pouring, emitting, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes into or on any land or water.

(261) "Start-up" means the setting in operation of a hazardous waste management unit or control device for any purpose.

(262) "State" means any of the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands or Guam but does not include any foreign country.

(263) "Steam stripping operation" means a distillation operation in which vaporization of a volatile constituents of a liquid mixture takes place by the introduction of steam directly into the charge.

(264) "Storage facility" means a facility or part of a facility at which hazardous waste is held for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere. A generator who accumulates his own hazardous wastes in an approved manner for less than ninety (90) days for subsequent transport on site or off site is not operating or maintaining a storage facility.

(265) "Storage of hazardous waste" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed, or stored elsewhere.

(266) "Storage" shall have the meaning specified in KRS 224.01-010.

(267) "Substantial business relationship" means the extent of a business relationship necessary to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" shall arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the cabinet.

(268) "Sudden accidental occurrence" means an occurrence which is not continuous or repeated in nature.

(269) "Sump" means any pit or reservoir that meets the definition of tank, and those troughs and trenches connected to it, that serves to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile administrative regulations, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(270) "Surface impoundment" means a facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(271) "Surge control tank" means a large-sized pipe or storage reservoir sufficient to contain the surging liquid discharge of the process tank to which it is connected.

(272) "Tangible net worth" means the tangible assets that remain after deducting liabilities; these assets would not include intangibles such as goodwill and rights to patents or royalties.

(273) "Tank" means a stationary device designed to contain an accumulation of hazardous waste that is constructed primarily of nonearthen materials (for example, wood, concrete, steel, or plastic)

which provide structural support and which does not meet the definition of any other unit.

(274) "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

(275) "Termination" shall have the meaning specified in KRS 224.01-010.

(276) "The full amount of the liability coverage to be provided" means the amount of coverage for sudden and nonsudden occurrences required to be provided by the owner or operator, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(277) "Thermal treatment facility" means a facility or part of a facility which uses elevated temperatures as the primary means to change the chemical, physical or biological character or composition of hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge.

(278) "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge (see also "incinerator" and "open burning").

(279) "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of Section 4(3)(b) of 401 KAR 43:020 or Section 4(3)(b) of 401 KAR 43:030.

(280) "Thin-film evaporation operation" means a distillation operation that employs a heating surface consisting of a large diameter tube that may be either straight or tapered, horizontal or vertical. Liquid is spread on the tube wall by a rotating assembly of blades that maintain a close clearance from the wall or actually ride on the film of liquid on the wall.

(281) "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which acid is neutralized.

(282) "Transit country" means any foreign country, other than a receiving country, through which a hazardous waste is transported.

(283) "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body is a separate transport vehicle.

(284) "Transportation" shall have the meaning specified in KRS 224.01-010.

(285) "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway or water.

(286) "Treatability study" means:

(a) A study in which a hazardous waste is subjected to a treatment process to determine:

1. Whether the waste is amenable to the treatment process;
2. What pretreatment, if any, is required;
3. The optimal process conditions needed to achieve the desired treatment;
4. The efficiency of a treatment process for a specific waste or wastes; or
5. The characteristics and volumes of residuals from a particular treatment process.

(b) For the purpose of 401 KAR 31:010, Section 4(5) and (6), exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies.

(c) A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

(287) "Treatment facility" means a facility or part of a facility using any method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste nonhazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

(288) "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

(289) "Treatment" shall have the meaning specified in KRS 224.01-010.

(290) "Underground drinking water source" means:

(a) An aquifer supplying drinking water for human consumption; or

(b) An aquifer in which the groundwater contains less than 10,000 mg/l total dissolved solids.

(291) "Underground injection" means the subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well".)

(292) "Underground tank" means a device meeting the definition of "tank" in this section whose entire surface area is totally below the surface of and covered by the ground.

(293) "Underlying hazardous constituent" means any constituent listed in Section 1 of 401 KAR 37:040, Table - Treatment Standards for Hazardous Wastes, except vanadium and zinc, which can reasonably be expected to be present at the point of generation of the hazardous waste, at a concentration above the constituent-specific treatment standards.

(294) "Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

(295) "Universal Waste" means any of the following hazardous wastes that are subject to the universal waste requirements of 401 KAR Chapter 43:

- (a) Batteries as described in Section 2 of 401 KAR 43:010;
- (b) Pesticides as described in Section 3 of 401 KAR 43:010;
- (c) Thermostats as described in Section 4 of 401 KAR 43:010;

and

- (d) Spent Lamps as described in Section 5 of 401 KAR 43:010.

(296) "Universal waste handler":

(a) Means:

1. A generator of universal waste; or
2. The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(b) Does not mean:

1. A person who treats (except under the provisions of Sections 4(1) or (3) of 401 KAR 43:020 or Sections 4(1) or (3) of 401 KAR 43:030), disposes of, or recycles universal waste; or
2. A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

(297) "Universal waste transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.

(298) "Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

(299) "Unsaturated zone" shall have the same meaning as "Zone of aeration".

(300) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(301) "Used oil" shall have the same meaning as KRS 224.50-545.

(302) "Used or reused" means a material that is either:

(a) Employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one (1) process used as feedstock in another process). However, a material shall not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

(b) Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

(303) "Vapor incinerator" means any enclosed combustion device that is used for destroying organic compounds and does not extract energy in the form of steam or process heat.

(304) "Vapor recovery system" means that equipment, device, or apparatus capable of collecting vapors and gases discharged from a storage tank, and a vapor processing system capable of affecting such vapors and gases so as to prevent their emission into the atmosphere.

(305) "Vapor-mounted seal" means a foam-filled primary seal mounted continuously around the circumference of the tank so that there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the hazardous waste surface, and the floating roof.

(306) "Vented" means discharged through an opening, typically an open-ended pipe or stack, allowing the passage of a stream of liquids, gases, or fumes into the atmosphere. The passage of liquids, gases, or fumes is caused by mechanical means such as compressors or vacuum-producing systems or by process-related means such as evaporation produced by heating and not caused by tank loading and unloading (work losses) or by natural means such as diurnal temperature changes.

(307) "Vessel" means any watercraft used or capable of being used as a means of transportation on the water.

(308) "Volatile organic concentration" or "VO concentration" means the fraction by weight of organic compounds in a hazardous waste expressed in terms of parts per million (ppmw) as determined by direct measurement using Method 25D or by knowledge of the waste in accordance with the requirements of Section 4 of 401 KAR 35:040.

(309) "Washout" means the carrying away of waste by waters as a result of flooding.

(310) "Waste boundary" means the outermost perimeter of the waste (projected in the horizontal plane) as it would exist at completion of the disposal activity.

(311) "Waste determination" means performing all applicable procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine whether a hazardous waste meets standards specified in 401 KAR Chapter 35. Examples of a waste determination include performing the procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine the average VO concentration of a hazardous waste at the point of waste origination; the average VO concentration of a hazardous waste at the point of waste treatment and comparing the results to the exit concentration limit specified for the process used to treat the hazardous waste; determining the organic reduction efficiency and the organic biodegradation efficiency for a biological process used to treat a hazardous waste and comparing the results to the applicable

standards; or the maximum volatile organic vapor pressure for a hazardous waste in a tank and comparing the results to the applicable standards.

(312) "Waste pile" shall have the same meaning as "pile".

(313) "Waste stabilization process" means any physical or chemical process used to either reduce the mobility of hazardous constituents in a hazardous waste or eliminate free liquids as determined by Test Method 9095 (Paint Filter Liquids Test) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW-846, Third Edition, September 1986, as amended by Update I, November 15, 1992 (incorporated by reference-refer to § 260.11 of this chapter). A waste stabilization process includes mixing the hazardous waste with binders or other materials, and curing the resulting hazardous waste and binder mixture. Other synonymous terms used to refer to this process are "waste fixation" or "waste solidification."

(314) "Waste" shall have the meaning specified in KRS 224.01-010.

(315) "Wastewaters" means wastes that contain less than one (1) percent by weight total organic carbon (TOC) and less than one (1) percent by weight total suspended solids (TSS), with the following exceptions:

(a) F001, F002, F003, F004, F005, wastewaters are solvent-water mixtures that contain less than one (1) percent by weight TOC or less than one (1) percent by weight total F001, F002, F003, F004, F005 solvent constituents listed in Section 1 of 401 KAR 37:040 in Table Treatment Standards for Hazardous Waste;

(b) K011, K013, K014 wastewaters contain less than five (5) percent by weight TOC and less than one (1) percent by weight TSS, as generated; and

(c) K103 and K104 wastewaters contain less than four (4) percent by weight TOC and less than one (1) percent by weight TSS.

(316) "Wastewater treatment unit" means a device that:

(a) Is part of a wastewater treatment facility that is subject to administrative regulation under either section 402 or 307(b) of the CWA;

(b) Receives and treats or stores an influent wastewater which is a hazardous waste as defined in 401 KAR 31:010, Section 3; or generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in 401 KAR 31:010, Section 3; or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Section 3 of 401 KAR 31:010; and

(c) Meets the definition of tank or tank system in this administrative regulation.

(317) "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

(318) "Water" or "waters of the Commonwealth" shall have the meaning specified in KRS 224.01-010.

(319) "Well" means any shaft or pit dug or bored into the earth, generally of cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(320) "Wetlands" means land that has a predominance of hydric soils and is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(321) "Zone of aeration" means that region of the soil or rock between the land surface and the nearest saturated zone in which the interstices are occupied partially by air.

(322) "Zone of engineering control" means an area under the control of the owner or operator that upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to waters of the Commonwealth.

(323) "Zone of saturation" means that part of the earth's crust containing groundwater in which all voids, large and small, are filled

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with liquid.

Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by context, acronyms and abbreviations used in 401 KAR Chapter 43 shall have the meaning as identified in Table 1 of this administrative regulation.

Table 1. Acronyms and Abbreviations.

Am.	Amended
C	Corrosive waste
CAA	Clean Air Act, as amended
CFR	Code of Federal Regulations
cm	Centimeter
cm ²	Centimeter squared
CO	Carbon monoxide
CO ₂	Carbon dioxide
CWA	Clean Water Act, as amended
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980
DOT	United States Department of Transportation
DRE	Destruction and removal efficiency
E	Explosive waste
eff.	Effective
EPA	United States Environmental Protection Agency
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act
FIA	Federal Insurance Administration
FR	Federal Register
H	Acutely hazardous waste
ha	Hectare
HTMR	High temperature metals recovery
HSWA	Hazardous and Solid Waste Amendments of 1994
I	Ignitable waste
KAR	Kentucky Administrative Regulation
kg	Kilogram
KPDES	Kentucky Pollution Discharge Elimination System
KRS	Kentucky Revised Statute
Ky.R.	Administrative Register of Kentucky
l	Liter
LC	Lethal concentration
LD	Lethal dose
ml	Milliliter
mm	Millimeter
N	Normal
NESHAPS	National Emissions Standards for Hazardous Air Pollutants
NPDES	National Pollutant and Discharge Elimination System
PCB	Polychlorinated biphenyl
pCi/l	Picocuries per liter
PHC	Principal hazardous constituent
Permit POHC	Permitted principal organic hazardous constituent
PM	Particulate matter
POHC	Principal organic hazardous constituent
ppm	parts per million
Trial POHC	Trial burn principal organic hazardous constituent
POTW	Publicly owned treatment works
PSD	Prevention of significant deterioration
psi	Pounds per square inch
psig	Pounds per square inch gauge
R	Reactive waste
RCRA	Resource Conservation and Recovery Act, as amended
SDWA	Safe Drinking Water Act, as amended
SEC	Securities and Exchange Commission

SIC	Standard Industrial Classification Code
SPCC	Spill Prevention, Control, and Countermeasures Plan
T	Toxic waste
UIC	Underground Injection Control
UICP	Underground Injection Control Program
USC	United States Code
U.S. EPA	United States Environmental Protection Agency
USGS	United States Geological Survey
USPS	United States Postal Service

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: This regulation does not affect any entities, because it only defines terms used in the regulation. The regulation was promulgated to comply with KRS 13A.222.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any

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effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.
2. Second and subsequent years: No public comments were received.
3. Effects on the promulgating administrative body:
 - a. Direct and indirect costs or savings:
 1. First year: The cabinet will experience no additional costs or savings by promulgating the amendments to this regulation.
 2. Continuing costs or savings: None
 3. Additional factors increasing or decreasing costs: There will be no additional factors affecting costs.
 - b. Reporting and paperwork requirements: There will be no extra paperwork requirements.
4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on the state and local revenue with the promulgation of this regulation.
5. Source of revenue to be used for implementation and enforcement of administrative regulation: No costs are imposed with the promulgation of this regulation.
6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:
 - a. Geographical area in which administrative regulation will be implemented: No public comments were received.
 - b. Kentucky: No public comments were received.
7. Assessment of alternative methods; reasons why alternatives were rejected: There were no other alternatives that would achieve compliance with KRS 13A.222.
8. Assessment of expected benefits of the administrative regulation: The benefit is having the definitions clearly stated at the beginning of each chapter.
- 9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Not applicable since no requirements are imposed.
- b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.
- c. If detrimental effect would result, explain detrimental effect: Not applicable.
10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.
 - a. Necessity of proposed regulation if in conflict: Not applicable.
 - b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.
11. Any additional information or comments: No additional comments.
12. TIERING: Is tiering applied? Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.
2. State compliance standards: The proposed regulation establishes definitions of universal waste terms and the clarifies certain definitions. This regulation is necessary to maintain consistency between state and federal programs.
3. Minimum or uniform standards contained in the federal

mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that manages universal waste.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. This administrative regulation establishes definitions for all terms within 401 KAR Chapter 43. These terms are assimilated from existing federal regulatory definitions and existing statutory definitions where applicable.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): Because this administrative regulation only establishes definitions for 401 KAR Chapter 43, this administrative regulation will not affect state, county, or local expenditures.

Other Explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (New Administrative Regulation)

401 KAR 43:010. General standards for universal waste.

RELATES TO: KRS 224.10, 224.40, 224.46, 40 CFR Part 273 Subpart A

STATUTORY AUTHORITY: KRS 224.10, 224.46-510

NECESSITY AND FUNCTION: KRS 224.46-510(1) requires the cabinet to promulgate regulations which establish standards for generators of hazardous waste by amount of waste generated. KRS 224.46-510(3) provides that the cabinet shall establish classes or categories of hazardous waste reflecting the relative degree of hazard. This chapter establishes minimum standards for persons who generate, handle, transport or receive universal waste. This administrative regulation identifies the categories of universal wastes and establishes requirements for managing universal wastes.

Section 1. Scope. (1) This administrative regulation establishes requirements for managing the following:

- (a) Batteries as described in Section 2 of this administrative regulation;
- (b) Pesticides as described in Section 3 of this administrative regulation;
- (c) Thermostats as described in Section 4 of this administrative

regulation; and

(d) Spent lamps as described in Section 5 of this administrative regulation.

(2) This administrative regulation provides an alternative set of management standards in lieu of regulation under 401 KAR Chapters 30 through 38.

Section 2. Applicability - Batteries. (1)(a) The requirements of this chapter apply to persons managing batteries, except those listed in subsection (2) of this section.

(b) Spent lead-acid batteries which are not managed under 401 KAR 36:070, are subject to management under this chapter.

(2) The requirements of this chapter do not apply to persons managing the following batteries:

(a) Spent lead-acid batteries that are managed under 401 KAR 36:070.

(b) Batteries, that are not yet wastes under 401 KAR Chapter 31, including those that do not meet the criteria for waste generation in subsection (3) of this section.

(c) Batteries, that are not hazardous waste. A battery is a hazardous waste if it exhibits one or more of the characteristics identified in 401 KAR 31:030.

(3)(a) A used battery becomes a waste on the date it is discarded (for example, when sent for reclamation).

(b) An unused battery becomes a waste on the date the handler decides to discard it.

Section 3. Applicability - Pesticides. (1) The requirements of this chapter apply to persons managing pesticides, meeting the following conditions, except those listed in subsection (2) of this section:

(a) Recalled pesticides that are:

1. Stocks of a suspended and canceled pesticide that are part of a voluntary or mandatory recall under FIFRA Section 19(b), including, but not limited to those owned by the registrant responsible for conducting the recall; or

2. Stocks of a suspended or canceled pesticide, or a pesticide that is not in compliance with FIFRA, that are part of a voluntary recall by the registrant.

(b) Stocks of other unused pesticide products that are collected and managed as part of a waste pesticide collection program.

(2) The requirements of this chapter do not apply to persons managing the following pesticides:

(a) Recalled pesticides described in subsection (1)(a) of this section, and unused pesticide products described in subsection (1)(b) of this section, that are managed by farmers in compliance with Section 10 of 401 KAR 32:050. (Section 10 of 401 KAR 32:050 addresses pesticides disposed on the farmer's own farm in a manner consistent with the disposal instructions on the pesticide label, providing the container is triple rinsed in accordance with Section 7(2)(c) of 401 KAR 31:010);

(b) Pesticides not meeting the conditions set forth in subsection (1) of this section. These pesticides shall be managed in compliance with the hazardous waste regulations in 401 KAR Chapter 30 through 38;

(c) Pesticides that are not wastes under 401 KAR Chapter 31, including those that do not meet the criteria for waste generation in subsection (3) of this section or those that are not wastes as described in subsection (4) of this section; and

(d) Pesticides that are not hazardous waste. A pesticide is a hazardous waste if it is listed in 401 KAR 31:040 or if it exhibits one (1) or more of the characteristics identified in 401 KAR 31:030.

(3)(a) A recalled pesticide described in subsection (1)(a) of this section becomes a waste on the first date on which both of the following conditions apply:

1. The generator of the recalled pesticide agrees to participate in the recall; and

2. The person conducting the recall decides to discard the

pesticide (for example, burn the pesticide for energy recovery).

(b) An unused pesticide product described in subsection (1)(b) of this section becomes a waste on the date the generator decides to discard it.

(4) The following pesticides are not wastes:

(a) Recalled pesticides described in subsection (1)(a) of this section, provided that the person conducting the recall:

1. Has not made a decision to discard (for example, burn for energy recovery) the pesticide. Until such a decision is made, the pesticide does not meet the definition of "waste" under Section 2 of 401 KAR 31:010; thus the pesticide is not a hazardous waste and is not subject to hazardous waste requirements, including the requirements of this chapter. This pesticide remains subject to the requirements of FIFRA; or

2. Has made a decision to use a management option that, under Section 2 of 401 KAR 31:010, does not cause the pesticide to be a waste (that is, the selected option is use (other than use constituting disposal) or reuse (other than burning for energy recovery), or reclamation). Such a pesticide is not a waste and therefore is not a hazardous waste, and is not subject to the hazardous waste requirements including the requirements of this chapter. This pesticide, including a recalled pesticide that is exported to a foreign destination for use or reuse, remains subject to the requirements of FIFRA.

(b) Unused pesticide products described in subsection (1)(b) of this section, if the generator of the unused pesticide product has not decided to discard (for example, burn for energy recovery) them. These pesticides remain subject to the requirements of FIFRA.

Section 4. Applicability - Mercury Thermostats. (1) The requirements of this chapter apply to persons managing thermostats, except those listed in subsection (2) of this section.

(2) The requirements of this chapter do not apply to persons managing the following thermostats:

(a) Thermostats that are not yet wastes under 401 KAR Chapter 31. Subsection (3) of this section describes when thermostats become wastes.

(b) Thermostats that are not hazardous waste. A thermostat is a hazardous waste if it exhibits one (1) or more of the characteristics identified in 401 KAR 31:030.

(3)(a) A used thermostat becomes a waste on the date it is discarded (for example, sent for reclamation).

(b) An unused thermostat becomes a waste on the date the handler decides to discard it.

Section 5. Applicability - Spent Lamps. (1) The requirements of this chapter apply to persons managing lamps, except those listed in subsection (2) of this section.

(2) The requirements of this chapter do not apply to persons managing the following lamps:

(a) Lamps that are not yet wastes under 401 KAR Chapter 31. Subsection (3) of this section describes when lamps become wastes.

(b) Lamps that are not hazardous waste. A lamp is a hazardous waste if it exhibits one or more of the characteristics identified in 401 KAR 31:030.

(3)(a) A used lamp becomes a waste on the date it is discarded (for example, sent for reclamation).

(b) An unused lamp becomes a waste on the date the handler decides to discard it.

Section 6. Applicability - Household and Conditionally Exempt Small Quantity Generator Waste. (1) Persons managing the wastes listed below may, at their option, manage them under the requirements of this chapter:

(a) Household wastes that are exempt under Section 4(2)(a) of 401 KAR 31:010 and are also of the same type as the universal wastes; or

(b) Conditionally exempt small quantity generator wastes that are

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exempt under 401 KAR 31:010 and are also of the same type as the universal wastes.

(2) Persons who comeingle the wastes described in subsection (1)(a) and (b) of this section, together with universal waste regulated under this chapter shall manage the comingled waste under the requirements of this chapter.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed regulation affects persons that manage universal wastes, which includes: batteries; pesticides; thermostats; and spent mercury containing lamps.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: One commenter asked that spent mercury containing lamps that are being shipped be allowed to use a bill of lading rather than a hazardous waste manifest. The cabinet responded by adopting the EPA's Universal Waste Rule in that with that rule, a bill of lading will be an acceptable method for tracking these shipments. The universal waste regulations are being established to address hazardous waste that can be

described as low toxicity and high volume. These wastes include: certain batteries, pesticides, and thermostats, as well as spent mercury containing lamps. Due to the nature of these wastes, the cabinet has proposed standards that are less stringent than existing hazardous waste standards. This will encourage proper management of these wastes, reduce disposal costs for hazardous waste facilities, and provide consistency with existing federal standards.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: One commenter was concerned about having to report spent mercury containing lamps on the hazardous waste annual report and the annual tax assessment. This commenter also suggested that hazardous waste generators be allowed to store used lamps for up to one year provided: The generator has a contract for lamp recycling and an active recycling program; and the generator institutes safety practices that include safe handling and record keeping of the lamps. The cabinet has adopted the Universal Waste Rule, adding spent mercury containing lamps to the universal waste list. Consistent with this rule, handlers will be allowed to accumulate universal waste for up to one year from the date the waste was generated or received from another handler. Universal waste may be accumulated for more than one year if such activity is solely for the purpose of accumulation as necessary to facilitate proper recovery, treatment, or disposal. In addition, since universal waste is a hazardous waste, spent mercury containing lamps, as well as all other universal waste, would have to be included on the hazardous waste annual report and for the annual hazardous waste assessment. KRS 224.46-580(7) mandates that an assessment be placed upon every generator of hazardous waste and that payment therefore be accompanied by a report or return prescribed by the cabinet. The cabinet cannot alter statutory requirements by regulation. Another commenter wanted the cabinet to allow consolidation points for generators of spent mercury containing lamps if neither storage space nor trained personnel are available at the generation site. The cabinet's response was once again consistent with the Universal Waste Rule: A universal waste handler may send his universal waste to another universal waste handler for accumulation purposes, as provided in this administrative regulation.

2. Second and subsequent years: Same as mentioned above.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The existing staff will have an increased workload in order to process the newly regulated entities.

2. Continuing costs or savings: Once the new entities are processed, there will be no extra costs.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs.

b. Reporting and paperwork requirements: There are no additional paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants are to be used for the implementation and enforcement of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: This administrative regulation will be implemented throughout all of Kentucky.

b. Kentucky: One commenter requested recognition for their recycling of spent mercury containing lamps. The cabinet currently holds an annual Governor's Conference on the Environment, at which time the Governor's Environmental Excellence Awards are presented to individuals, organizations, and industries who have made outstand-

ing contributions to preserve and protect Kentucky's natural resources and the environment. This may include those who make extra efforts to recycle rather than dispose such wastes as mercury containing lamps.

7. Assessment of alternative methods; reasons why alternatives were rejected: Unlike the federal EPA, the cabinet accepted the alternative of including mercury containing lamps as universal wastes in response to comments to the Notice of Intent.

8. Assessment of expected benefits of the administrative regulation: The universal waste regulations are being established to address hazardous waste that can be described as low toxicity and high volume. These wastes include: batteries, pesticides, thermostats, and spent mercury containing lamps. Due to the nature of these wastes, the cabinet has proposed standards that are less stringent than existing hazardous waste standards. This will encourage proper management of these wastes and provide consistency with existing federal standards.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: The implementation of this regulation will maintain protection of public health and environmental welfare across the commonwealth.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Yes, detrimental effects could occur.

c. If detrimental effect would result, explain detrimental effect: Improper management of universal waste could harm public health and the environment.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, policies, or regulations that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Yes, tiering was used. This administrative regulation applies persons who manage universal wastes (batteries, pesticides, thermostats, and spent mercury containing lamps). Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed regulation establishes management standards for universal wastes, which include: certain batteries; pesticides; and thermostats; as well as spent mercury-containing lamps. This regulation is necessary to maintain consistency between state and federal programs and to provide regulatory relief to managers of certain wastes.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that manages universal waste (batteries, pesticides, thermostats, and spent mercury containing lamps).

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): State, county, or local government offices that manage universal wastes should save money due to the promulgation of 401 KAR Chapter 43 regulations. If this administrative regulation does not apply to a state, county, or local office of government, there will be no affect.

Other Explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (New Administrative Regulation)

401 KAR 43:020. Standards for small quantity handlers of universal waste.

RELATES TO: KRS 224.10, 224.40, 224.46, 40 CFR Part 273 Subpart B

STATUTORY AUTHORITY: KRS 224.10, 224.46-510

NECESSITY AND FUNCTION: KRS 224.46-510(1) requires the cabinet to promulgate regulations which establish standards for generators of hazardous waste by amount of waste generated. KRS 224.46-510(3) provides that the cabinet shall establish classes or categories of hazardous waste reflecting the relative degree of hazard. This chapter establishes minimum standards for persons who generate, handle, transport or receive universal waste. This administrative regulation establishes standards for small quantity handlers of universal waste.

Section 1. Applicability. This administrative regulation applies to small quantity handlers of universal waste.

Section 2. Prohibitions. A small quantity handler of universal waste is:

(1) Prohibited from disposing of universal waste;

(2) Prohibited from diluting or treating universal waste, except by responding to releases as provided in Section 8 of this administrative regulation or by managing specific wastes as provided in Section 4 of this administrative regulation; and

(3) Prohibited from treating universal waste on-site. If a small quantity handler of a universal waste wishes to conduct on-site

treatment of an accumulated universal waste, the waste will no longer be considered a universal waste and the handler is subject to the provisions of 401 KAR Chapters 30 through 39.

Section 3. Notification. A small quantity handler of universal waste is not required to notify the cabinet of universal waste handling activities.

Section 4. Waste Management. (1) A small quantity handler of universal waste shall manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(a) Batteries. A small quantity handler of universal waste shall contain any universal waste battery that shows evidence of leakage, spillage, or damage that may cause leakage under reasonably foreseeable conditions in a container. The container shall be closed, structurally sound, compatible with the contents of the battery, and shall lack evidence of leakage, spillage, or damage that may cause leakage under reasonably foreseeable conditions.

(b) A small quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed (except that cells may be opened to remove electrolyte but shall be immediately closed after removal):

1. Sorting batteries by type;
2. Mixing battery types in one container;
3. Discharging batteries so as to remove the electric charge;
4. Regenerating used batteries;
5. Disassembling batteries or battery packs into individual batteries or cells;
6. Removing batteries from consumer products; or
7. Removing electrolyte from batteries.

(c) A small quantity handler of universal waste who removes electrolyte from batteries, or who generates other waste (for example, battery pack materials, discarded consumer products) as a result of the activities listed above, shall determine whether the electrolyte or other waste exhibits a characteristic of hazardous waste identified in 401 KAR 31:030.

1. If the electrolyte or other waste exhibits a characteristic of hazardous waste, it is subject to all applicable requirements of 401 KAR Chapter 30 through 39. The handler is considered the generator of the hazardous electrolyte or other waste and is subject to 401 KAR Chapter 32.

2. If the electrolyte or other waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state, and local waste regulations.

(2) Pesticides. A small quantity handler of universal waste shall manage universal waste pesticides in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste pesticides shall be contained in one or more of the following:

(a) A container that remains closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that may cause leakage under reasonably foreseeable conditions; or

(b) A container that does not meet the requirements of paragraph (a) of this section, provided that the unacceptable container is overpacked in a container that does meet the requirements of paragraph (a) of this subsection; or

(c) A tank that meets the requirements of 401 KAR 35:190, except for Sections 8 and 11 of 401 KAR 35:190; or

(d) A transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that may cause leakage under reasonably foreseeable conditions.

(3) Thermostats. A small quantity handler of universal waste shall manage universal waste thermostats in a way that prevents releases

of any universal waste or component of a universal waste to the environment, as follows:

(a) A small quantity handler of universal waste shall contain any universal waste thermostat that shows evidence of leakage, spillage, or damage that may cause leakage under reasonably foreseeable conditions in a container. The container shall be closed, structurally sound, compatible with the contents of the thermostat, and shall lack evidence of leakage, spillage, or damage that may cause leakage under reasonably foreseeable conditions.

(b) A small quantity handler of universal waste may remove mercury-containing ampules from universal waste thermostats provided the handler:

1. Removes the ampules in a manner designed to prevent breakage of the ampules;
2. Removes ampules only over or in a containment device (for example, tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage);
3. Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules, from the containment device to a container that meets the requirements of Section 5 of 401 KAR 32:030;
4. Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of Section 5 of 401 KAR 32:030;
5. Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;
6. Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;
7. Stores removed ampules in closed, nonleaking containers that are in good condition; and
8. Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation.

(c)1. A small quantity handler of universal waste who removes mercury-containing ampules from thermostats shall determine whether the following exhibit a characteristic of hazardous waste identified in 401 KAR 31:030:

- a. Mercury or clean-up residues resulting from spills or leaks; and
- b. Other waste generated as a result of the removal of mercury-containing ampules (for example, remaining thermostat units).

2. If the mercury, residues, or other waste exhibits a characteristic of hazardous waste, it shall be managed in compliance with all applicable requirements of 401 KAR Chapter 30 through 38. The handler is considered the generator of the mercury, residues, or other waste and shall manage it subject to 401 KAR Chapter 32.

3. If the mercury, residues, or other waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local waste regulations.

(4)(a) Lamps. A small quantity handler of universal waste shall manage universal waste lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment.

(b) A small quantity handler of universal waste lamps shall not treat (for example, break, disassemble, or crush) universal waste lamps, except as provided in Section 2 of this administrative regulation.

(c) A small quantity handler of universal waste lamps shall manage a release from universal waste lamps as required by Section 8 of this administrative regulation.

Section 5. Labeling/markings. A small quantity handler of universal waste shall label or mark the universal waste to identify the type of universal waste as specified below:

- (1) Universal waste batteries (that is, each battery), or a container

in which the batteries are contained, shall be labeled or marked clearly with the following phrase: "Universal Waste - Battery(ies);"

(2) A container (or multiple container package unit), tank, transport vehicle or vessel in which recalled universal waste pesticides as described in Section 3(1)(a) of 401 KAR 43:010 are contained shall be labeled or marked clearly with:

(a) The label that was on or accompanied the product as sold or distributed; and

(b) The words "Universal Waste - Pesticide(s);"

(3) A container, tank, or transport vehicle or vessel in which unused pesticide products as described in Section 3(1)(b) of 401 KAR 43:010 are contained shall be labeled or marked clearly with:

(a)1. The label that was on the product when purchased, if still legible;

2. If using the labels described in paragraph (a)1. of this subsection is not feasible, the appropriate label as required under 49 CFR Subpart C; and

(b) The words "Universal Waste - Pesticide(s);"

(4) Universal waste thermostats (that is, each thermostat), or a container in which the thermostats are contained, shall be labeled or marked clearly with the following phrase: "Universal Waste - Mercury Thermostat(s);"

(5) Universal waste lamps (that is, each lamp), or a container in which the lamps are contained, shall be labeled or marked clearly with the following phrase: "Universal Waste - Lamps."

Section 6. Accumulation Time Limits. (1) A small quantity handler of universal waste may accumulate universal waste for no longer than one (1) year from the date the universal waste is generated, or received from another handler, unless the requirements of subsection (2) of this section are met.

(2) A small quantity handler of universal waste may accumulate universal waste for longer than one (1) year from the date the universal waste is generated, or received from another handler, if such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal. However, the handler bears the burden of proving that such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal.

(3) A small quantity handler of universal waste who accumulates universal waste shall be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:

(a) Placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;

(b) Marking or labeling each individual item of universal waste (for example, each battery, thermostat, or spent lamp) with the date it became a waste or was received;

(c) Maintaining an inventory system on-site that identifies the date each universal waste became a waste or was received;

(d) Maintaining an inventory system on-site that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received;

(e) Placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or

(f) Any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

Section 7. Employee Training. A small quantity handler of universal waste shall inform all employees who handle or have responsibility for managing universal waste. The information shall describe proper handling and emergency procedures appropriate to

the type(s) of universal waste handled at the facility.

Section 8. Response to Releases. (1) A small quantity handler of universal waste shall immediately contain all releases of universal wastes and other residues from universal wastes.

(2) A small quantity handler of universal waste shall determine whether any material resulting from the release is hazardous waste, and if so, shall manage the hazardous waste in compliance with all applicable requirements of 401 KAR Chapters 30 through 38. The handler is considered the generator of the material resulting from the release, and shall manage it in compliance with 401 KAR Chapter 32.

Section 9. Off-site Shipments. (1) A small quantity handler of universal waste is prohibited from sending or taking universal waste to a place other than another universal waste handler, a destination facility, or a foreign destination.

(2) If a small quantity handler of universal waste self-transport universal waste off-site, the handler becomes a universal waste transporter for those self-transportation activities and shall comply with the transporter requirements of 401 KAR 43:040 while transporting the universal waste.

(3) If a universal waste being offered for off-site transportation meets the definition of a hazardous material under 49 CFR Subpart C, a small quantity handler of universal waste shall package, label, mark and placard the shipment, and prepare the proper shipping papers in accordance with the applicable Transportation Cabinet regulations under 49 CFR Subpart C.

(4) Prior to sending a shipment of universal waste to another universal waste handler, the originating handler shall ensure that the receiving handler agrees to receive the shipment.

(5) If a small quantity handler of universal waste sends a shipment of universal waste to another handler or to a destination facility and the shipment is rejected by the receiving handler or destination facility, the originating handler shall either:

(a) Receive the waste back when notified that the shipment has been rejected; or

(b) Agree with the receiving handler on a destination facility to which the shipment will be sent.

(6) A small quantity handler of universal waste may reject a shipment containing universal waste, or a portion of a shipment containing universal waste that he has received from another handler. If a handler rejects a shipment or a portion of a shipment, he shall contact the originating handler to notify him of the rejection and to discuss reshipment of the load. The handler shall:

(a) Send the shipment back to the originating handler; or

(b) If agreed to by both the originating and receiving handler, send the shipment to a destination facility.

(7) If a small quantity handler of universal waste receives a shipment containing hazardous waste that is not a universal waste, the handler shall immediately notify the cabinet of the illegal shipment, and provide the name, address, and phone number of the originating shipper. The cabinet will provide instructions for managing the hazardous waste.

(8) If a small quantity handler of universal waste receives a shipment of nonhazardous, nonuniversal waste, the handler may manage the waste in any way that is in compliance with applicable federal, state and local waste regulations.

Section 10. Tracking Universal Waste Shipments. A small quantity handler of universal waste is not required to keep records of shipments of universal waste.

Section 11. Exports. A small quantity handler of universal waste who sends universal waste to a foreign destination shall:

(1) Comply with the requirements applicable to a primary exporter in Section 4, Section 6(1)(a) through (d), Section 6 (1)(f), Section 6(2), and Section 8 of 401 KAR 32:050;

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(2) Export such universal waste only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent; and

(3) Provide a copy of the EPA Acknowledgment of Consent for the shipment to the transporter transporting the shipment for export.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed regulation affects small quantity handlers that manage universal wastes, which includes: batteries; pesticides; thermostats; and spent mercury containing lamps.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: One commenter asked that spent mercury containing lamps that are being shipped be allowed to use a bill of lading rather than a hazardous waste manifest. The cabinet responded by adopting the EPA's Universal Waste Rule in that with that rule, a bill of lading will be an acceptable method for tracking these shipments. The universal waste regulations are being established to address hazardous waste that can be described as low toxicity and high volume. These wastes include:

certain batteries, pesticides, and thermostats, as well as spent mercury containing lamps. Due to the nature of these wastes, the cabinet has proposed standards that are less stringent than existing hazardous waste standards. This will encourage proper management of these wastes, reduce disposal costs for hazardous waste facilities, and provide consistency with existing federal standards.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: One commenter was concerned about having to report spent mercury containing lamps on the hazardous waste annual report and the annual tax assessment. This commenter also suggested that hazardous waste generators be allowed to store used lamps for up to one year provided: The generator has a contract for lamp recycling and an active recycling program; and the generator institutes safety practices that include safe handling and record keeping of the lamps. The cabinet has adopted the Universal Waste Rule, adding spent mercury containing lamps to the universal waste list. Consistent with this rule, handlers will be allowed to accumulate universal waste for up to one year from the date the waste was generated or received from another handler. Universal waste may be accumulated for more than one year if such activity is solely for the purpose of accumulation as necessary to facilitate proper recovery, treatment, or disposal. In addition, since universal waste is a hazardous waste, spent mercury containing lamps, as well as all other universal waste, would have to be included on the hazardous waste annual report and for the annual hazardous waste assessment. KRS 224.46-580(7) mandates that an assessment be placed upon every generator of hazardous waste and that payment therefore be accompanied by a report or return prescribed by the cabinet. The cabinet cannot alter statutory requirements by regulation. Another commenter wanted the cabinet to allow consolidation points for generators of spent mercury containing lamps if neither storage space nor trained personnel are available at the generation site. The cabinet's response was once again consistent with the Universal Waste Rule: A universal waste handler may send his universal waste to another universal waste handler for accumulation purposes, as provided in this administrative regulation.

2. Second and subsequent years: Same as mentioned above.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The existing staff will have an increased workload in order to process the newly regulated entities.

2. Continuing costs or savings: Once the new entities are processed, there will be no extra costs.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs.

b. Reporting and paperwork requirements: There are no additional paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants are to be used for the implementation and enforcement of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: This administrative regulation will be implemented throughout all of Kentucky.

b. Kentucky: One commenter requested recognition for their recycling of spent mercury containing lamps. The cabinet currently holds an annual Governor's Conference on the Environment, at which time the Governor's Environmental Excellence Awards are presented to individuals, organizations, and industries who have made outstanding contributions to preserve and protect Kentucky's natural resources

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and the environment. This may include those who make extra efforts to recycle rather than dispose such wastes as mercury containing lamps.

7. Assessment of alternative methods; reasons why alternatives were rejected: Unlike the federal EPA, the cabinet accepted the alternative of including mercury containing lamps as universal wastes in response to comments to the Notice of Intent.

8. Assessment of expected benefits of the administrative regulation: The Universal Waste Regulations are being established to address hazardous waste that can be described as low toxicity and high volume. These wastes include: batteries, pesticides, thermostats, and spent mercury containing lamps. Due to the nature of these wastes, the cabinet has proposed standards that are less stringent than existing hazardous waste standards. This will encourage proper management of these wastes and provide consistency with existing federal standards.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: The implementation of this regulation will maintain protection of public health and environmental welfare across the commonwealth.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Yes, detrimental effects could occur.

c. If detrimental effect would result, explain detrimental effect: Improper management of universal waste could harm public health and the environment.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, policies, or regulations that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Yes, tiering was used. This administrative regulation applies persons who manage universal wastes (batteries, pesticides, thermostats, and spent mercury containing lamps). Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed regulation establishes management standards for small quantity handlers of universal wastes, which include: certain batteries; pesticides; and thermostats; as well as spent mercury-containing lamps. This regulation is necessary to maintain consistency between state and federal programs and to provide regulatory relief to managers of certain wastes.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that is a small quantity handlers of a universal waste (batteries, pesticides, thermostats, and spent mercury containing lamps).

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): State, county, or local government offices that manage universal wastes should save money due to the promulgation of 401 KAR Chapter 43 regulations. If this administrative regulation does not apply to a state, county, or local office of government, there will be no affect.

Other Explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (New Administrative Regulation)

401 KAR 43:030. Standards for large quantity handlers of universal waste.

RELATES TO: KRS 224.10, 224.40, 224.46, 40 CFR Part 273 Subpart C

STATUTORY AUTHORITY: KRS 224.10, 224.46-510

NECESSITY AND FUNCTION: KRS 224.46-510(1) requires the cabinet to promulgate regulations which establish standards for generators of hazardous waste by amount of waste generated. KRS 224.46-510(3) provides that the cabinet shall establish classes or categories of hazardous waste reflecting the relative degree of hazard. This chapter establishes minimum standards for persons who generate, handle, transport or receive universal waste. This administrative regulation establishes standards for large quantity handlers of universal waste.

Section 1. Applicability. This administrative regulation applies to large quantity handlers of universal waste.

Section 2. Prohibitions. A large quantity handler of universal waste is:

(1) Prohibited from disposing of universal waste;

(2) Prohibited from diluting or treating universal waste, except by responding to releases as provided in Section 8 of this administrative regulation or by managing specific wastes as provided in Section 4 of this administrative regulation; and

(3) Prohibited from treating universal waste on-site. If a large quantity handler of a universal waste wishes to conduct on-site

treatment of an accumulated universal waste, the waste will no longer be considered a universal waste and the handler is subject to the provisions of 401 KAR Chapters 32 through 39.

Section 3. Notification. (1)(a) Except as provided in subsection (1)(b) and (c) of this section, a large quantity handler of universal waste shall send a written notification of universal waste management to the cabinet, in accordance with Section 3 of 401 KAR 32:010, and received an EPA Identification Number, before accumulating 5,000 kilograms of universal waste.

(b) A large quantity handler of universal waste who has already notified EPA of his hazardous waste management activities and has received an EPA Identification Number is not required to renotify under this section.

(c) A large quantity handler of universal waste who manages recalled universal waste pesticides as described in Section 3(1)(a) of 401 KAR 43:010 and who has sent notification to EPA as required by 40 CFR part 165 is not required to notify the cabinet for those recalled universal waste pesticides under this section.

(2) This notification shall include:

(a) The universal waste handler's name and mailing address;

(b) The name and business telephone number of the person at the universal waste handler's site who shall be contacted regarding universal waste management activities;

(c) The address or physical location of the universal waste management activities, including the county name and latitude/longitude;

(d) A list of all of the types of universal waste managed by the handler (for example, batteries, lamps, pesticides, thermostats);

(e) A statement indicating that the handler is accumulating more than 5,000 kilograms of universal waste at one time and the types of universal waste (for example, batteries, lamps, pesticides, thermostats) the handler is accumulating above this quantity.

Section 4. Waste Management. (1) A large quantity handler of universal waste shall manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(a) A large quantity handler of universal waste shall contain any universal waste battery that shows evidence of leakage, spillage, or damage that may cause leakage under reasonably foreseeable conditions in a container. The container shall be closed, structurally sound, compatible with the contents of the battery, and shall lack evidence of leakage, spillage, or damage that may cause leakage under reasonably foreseeable conditions.

(b) A large quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed (except that cells may be opened to remove electrolyte but shall be immediately closed after removal):

1. Sorting batteries by type;
2. Mixing battery types in one container;
3. Discharging batteries so as to remove the electric charge;
4. Regenerating used batteries;
5. Disassembling batteries or battery packs into individual batteries or cells;
6. Removing batteries from consumer products; or
7. Removing electrolyte from batteries.

(c) A large quantity handler of universal waste who removes electrolyte from batteries, or who generates other waste (for example, battery pack materials, discarded consumer products) as a result of the activities listed above, shall determine whether the electrolyte or other waste exhibit a characteristic of hazardous waste identified in 401 KAR Chapter 31.

1. If the electrolyte or other waste exhibit a characteristic of hazardous waste, it shall be managed in compliance with all applicable requirements of 401 KAR Chapter 30 through 38. The handler is

considered the generator of the hazardous electrolyte or other waste and is subject to 401 KAR Chapter 32.

2. If the electrolyte or other waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local waste regulations.

(2) A large quantity handler of universal waste shall manage universal waste pesticides in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste pesticides shall be contained in one or more of the following:

(a) A container that remains closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that may cause leakage under reasonably foreseeable conditions; or

(b) A container that does not meet the requirements of paragraph (a) of this subsection, provided that the unacceptable container is overpacked in a container that does meet the requirements of paragraph (a) of this section; or

(c) A tank that meets the requirements of 401 KAR 35:190, except for Section 8(3) and Section 11 of 401 KAR 35:190; or

(d) A transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that may cause leakage under reasonably foreseeable conditions.

(3) A large quantity handler of universal waste shall manage universal waste thermostats in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(a) A large quantity handler of universal waste shall contain any universal waste thermostat that shows evidence of leakage, spillage, or damage that may cause leakage under reasonably foreseeable conditions in a container. The container shall be closed, structurally sound, compatible with the contents of the thermostat, and shall lack evidence of leakage, spillage, or damage that may cause leakage under reasonably foreseeable conditions.

(b) A large quantity handler of universal waste may remove mercury-containing ampules from universal waste thermostats provided the handler:

1. Removes the ampules in a manner designed to prevent breakage of the ampules;

2. Removes ampules only over or in a containment device (for example, tray or pan sufficient to contain any mercury released from an ampule in case of breakage);

3. Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules, from the containment device to a container that meets the requirements of Section 5 of 401 KAR 32:030;

4. Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of Section 5 of 401 KAR 32:030;

5. Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

6. Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

7. Stores removed ampules in closed, nonleaking containers that are in good condition; and

8. Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation.

(c)1. A large quantity handler of universal waste who removes mercury-containing ampules from thermostats shall determine whether the following exhibit a characteristic of hazardous waste identified in 401 KAR 31:030:

a. Mercury or clean-up residues resulting from spills or leaks; or

b. Other waste generated as a result of the removal of mercury-containing ampoules (for example, remaining thermostat units).

2. If the mercury, residues, or other waste exhibits a characteristic of hazardous waste, it shall be managed in compliance with all applicable requirements of 401 KAR Chapters 30 through 38. The handler is considered the generator of the mercury, residues, or other waste and is subject to 401 KAR Chapter 32.

3. If the mercury, residues, or other waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state and local waste regulations.

(4)(a) A large quantity handler of universal waste shall manage universal waste lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment.

(b) A large quantity handler of universal waste lamps shall not treat (for example, break, disassemble, or crush) universal waste lamps, except as provided in Section 2 of this administrative regulation.

(c) A large quantity handler of universal waste lamps shall manage a release from universal waste lamps as required by Section 8 of this administrative regulation.

Section 5. Labeling and Marking. A large quantity handler of universal waste shall label or mark the universal waste to identify the type of universal waste as specified below:

(1) Universal waste batteries (for example, each battery), or a container or tank in which the batteries are contained, shall be labeled or marked clearly with the following phrase: "Universal Waste - Batteries;"

(2) A container (or multiple container package unit), tank, transport vehicle or vessel in which recalled universal waste pesticides as described in Section 3(1)(a) of 401 KAR 43:010 are contained shall be labeled or marked clearly with:

(a) The label that was on or accompanied the product as sold or distributed; and

(b) The words "Universal Waste - Pesticide(s);"

(3) A container, tank, transport vehicle, or vessel in which unused pesticide products as described in Section 3(1)(b) of 401 KAR 43:010 are contained shall be labeled or marked clearly with:

(a)1. The label that was on the product when purchased, if still legible;

2. If using the labels described in paragraph (a)1. of this subsection is not feasible, the appropriate label as required under 49 CFR Subpart C; and

(b) The words "Universal Waste - Pesticide(s);"

(4) Universal waste thermostats (that is, each thermostat), or a container or tank in which the thermostats are contained, shall be labeled or marked clearly with the following phrase: "Universal Waste - Mercury Thermostat(s);"

(5) Universal waste lamps (that is, each lamp), or a container in which the lamps are contained, shall be labeled or marked clearly with the following phrase: "Universal Waste - Lamps."

Section 6. Accumulation Time Limits. (1) A large quantity handler of universal waste may accumulate universal waste for no longer than one (1) year from the date the universal waste is generated, or received from another handler, unless the requirements of subsection (2) of this section are met.

(2) A large quantity handler of universal waste may accumulate universal waste for longer than one (1) year from the date the universal waste is generated, or received from another handler, if such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal. However, the handler bears the burden of proving that such activity was solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal.

(3) A large quantity handler of universal waste shall be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:

(a) Placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;

(b) Marking or labeling the individual item of universal waste (for example, each battery) with the date it became a waste or was received;

(c) Maintaining an inventory system on-site that identifies the date the universal waste being accumulated became a waste or was received;

(d) Maintaining an inventory system on-site that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received;

(e) Placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or

(f) Any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

Section 7. Employee Training. A large quantity handler of universal waste shall ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relative to their responsibilities during normal facility operations and emergencies.

Section 8. Response to Releases. (1) A large quantity handler of universal waste shall immediately contain all releases of universal wastes and other residues from universal wastes.

(2) A large quantity handler of universal waste shall determine whether any material resulting from the release is hazardous waste, and if so, shall manage the hazardous waste in compliance with all applicable requirements of 401 KAR Chapters 32 through 39. The handler is considered the generator of the material resulting from the release, and is subject to 401 KAR Chapter 32.

Section 9. Off-site Shipments. (1) A large quantity handler of universal waste is prohibited from sending or taking universal waste to a place other than another universal waste handler, a destination facility, or a foreign destination.

(2) If a large quantity handler of universal waste self-transportes universal waste off-site, the handler becomes a universal waste transporter for those self-transportation activities and shall comply with the transporter requirements of 401 KAR 43:040 while transporting the universal waste.

(3) If a universal waste being offered for off-site transportation meets the definition of hazardous materials under 49 CFR Subpart C, a large quantity handler of universal waste shall package, label, mark and placard the shipment, and prepare the proper shipping papers in accordance with the applicable Transportation Cabinet's regulations under 49 CFR Subpart C;

(4) Prior to sending a shipment of universal waste to another universal waste handler, the originating handler shall ensure that the receiving handler agrees to receive the shipment.

(5) If a large quantity handler of universal waste sends a shipment of universal waste to another handler or to a destination facility and the shipment is rejected by the receiving handler or destination facility, the originating handler shall either:

(a) Receive the waste back when notified that the shipment has been rejected; or

(b) Agree with the receiving handler on a destination facility to which the shipment will be sent.

(6) A large quantity handler of universal waste may reject a

shipment containing universal waste, or a portion of a shipment containing universal waste that he has received from another handler. If a handler rejects a shipment or a portion of a shipment, he shall contact the originating handler to notify him of the rejection and to discuss reshipment of the load. The handler shall:

1. Send the shipment back to the originating handler, or
2. If agreed to by both the originating and receiving handler, send the shipment to a destination facility.

(7) If a large quantity handler of universal waste receives a shipment containing hazardous waste that is not a universal waste, the handler shall immediately notify the cabinet of the illegal shipment, and provide the name, address, and phone number of the originating shipper. The cabinet will provide instructions for managing the hazardous waste.

(8) If a large quantity handler of universal waste receives a shipment of nonhazardous, nonuniversal waste, the handler may manage the waste in any way that is in compliance with applicable federal, state and local waste regulations.

Section 10. Tracking Universal Waste Shipments. (1) A large quantity handler of universal waste shall keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The record for each shipment of universal waste received shall include the following information:

- (a) The name and address of the originating universal waste handler or foreign shipper from whom the universal waste was sent;
- (b) The quantity of each type of universal waste received (for example, batteries, lamps, pesticides, thermostats); and
- (c) The date of receipt of the shipment of universal waste.

(2) A large quantity handler of universal waste shall keep a record of each shipment of universal waste sent from the handler to other facilities. The record may take the form of a log, invoice, manifest, bill of lading or other shipping document. The record for each shipment of universal waste sent shall include the following information:

- (a) The name and address of the universal waste handler, destination facility, or foreign destination to whom the universal waste was sent;
- (b) The quantity of each type of universal waste sent (for example, batteries, lamps pesticides, thermostats); and
- (c) The date the shipment of universal waste left the facility.

(3)(a) A large quantity handler of universal waste shall retain the records described in subsection (1) of this section for at least three years from the date of receipt of a shipment of universal waste.

(b) A large quantity handler of universal waste shall retain the records described in subsection (2) of this section for at least three years from the date a shipment of universal waste left the facility.

Section 11. Exports. A large quantity handler of universal waste who sends universal waste to a foreign destination shall:

(1) Comply with the requirements applicable to a primary exporter in Section 4, Section 6(1)(a) through (d), Section 6(1)(f), Section 6(2), and Section 8 of 401 KAR 32:050;

(2) Export such universal waste only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent; and

(3) Provide a copy of the EPA Acknowledgment of Consent for the shipment to the transporter transporting the shipment for export.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the

address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed regulation affects large quantity handlers that manage universal wastes, which includes: batteries; pesticides; thermostats; and spent mercury containing lamps.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: One commenter asked that spent mercury containing lamps that are being shipped be allowed to use a bill of lading rather than a hazardous waste manifest. The cabinet responded by adopting the EPA's Universal Waste Rule in that with that rule, a bill of lading will be an acceptable method for tracking these shipments. The Universal Waste Regulations are being established to address hazardous waste that can be described as low toxicity and high volume. These wastes include: certain batteries, pesticides, and thermostats, as well as spent mercury containing lamps. Due to the nature of these wastes, the cabinet has proposed standards that are less stringent than existing hazardous waste standards. This will encourage proper management of these wastes, reduce disposal costs for hazardous waste facilities, and provide consistency with existing federal standards.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: One commenter was concerned about having to report spent mercury containing lamps on the hazardous waste annual report and the annual tax assessment. This commenter also suggested that hazardous waste generators be

allowed to store used lamps for up to one year provided: The generator has a contract for lamp recycling and an active recycling program; and the generator institutes safety practices that include safe handling and record keeping of the lamps. The cabinet has adopted the Universal Waste Rule, adding spent mercury containing lamps to the universal waste list. Consistent with this rule, handlers will be allowed to accumulate universal waste for up to one year from the date the waste was generated or received from another handler. Universal waste may be accumulated for more than one year if such activity is solely for the purpose of accumulation as necessary to facilitate proper recovery, treatment, or disposal. In addition, since universal waste is a hazardous waste, spent mercury containing lamps, as well as all other universal waste, would have to be included on the hazardous waste annual report and for the annual hazardous waste assessment. KRS 224.46-580(7) mandates that an assessment be placed upon every generator of hazardous waste and that payment therefore be accompanied by a report or return prescribed by the cabinet. The cabinet cannot alter statutory requirements by regulation. Another commenter wanted the cabinet to allow consolidation points for generators of spent mercury containing lamps if neither storage space nor trained personnel are available at the generation site. The cabinet's response was once again consistent with the Universal Waste Rule: A universal waste handler may send his universal waste to another universal waste handler for accumulation purposes, as provided in this administrative regulation.

2. Second and subsequent years: Same as mentioned above.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First Year: The existing staff will have an increased workload in order to process the newly regulated entities.

2. Continuing costs or savings: Once the new entities are processed, there will be no extra costs.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs.

b. Reporting and paperwork requirements: There are no additional paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants are to be used for the implementation and enforcement of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: This administrative regulation will be implemented throughout all of Kentucky.

b. Kentucky: One commenter requested recognition for their recycling of spent mercury containing lamps. The cabinet currently holds an annual Governor's Conference on the Environment, at which time the Governor's Environmental Excellence Awards are presented to individuals, organizations, and industries who have made outstanding contributions to preserve and protect Kentucky's natural resources and the environment. This may include those who make extra efforts to recycle rather than dispose such wastes as mercury containing lamps.

7. Assessment of alternative methods; reasons why alternatives were rejected: Unlike the federal EPA, the cabinet accepted the alternative of including mercury containing lamps as universal wastes in response to comments to the Notice of Intent.

8. Assessment of expected benefits of the administrative regulation: The Universal Waste Regulations are being established to address hazardous waste that can be described as low toxicity and high volume. These wastes include: batteries, pesticides, thermostats, and spent mercury containing lamps. Due to the nature of these wastes, the cabinet has proposed standards that are less stringent than existing hazardous waste standards. This will encourage proper

management of these wastes and provide consistency with existing federal standards.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: The implementation of this regulation will maintain protection of public health and environmental welfare across the commonwealth.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Yes, detrimental effects could occur.

c. If detrimental effect would result, explain detrimental effect: Improper management of universal waste could harm public health and the environment.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, policies, or regulations that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Yes, tiering was used. This administrative regulation applies persons who manage universal wastes (batteries, pesticides, thermostats, and spent mercury containing lamps). Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed regulation establishes management standards for large quantity handlers of universal wastes, which include: certain batteries; pesticides; and thermostats; as well as spent mercury-containing lamps. This regulation is necessary to maintain consistency between state and federal programs and to provide regulatory relief to managers of certain wastes.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that is a large quantity handler of a universal waste (batteries, pesticides, thermostats, and spent mercury containing lamps).

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a

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comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): State, county, or local government offices that manage universal wastes should save money due to the promulgation of 401 KAR Chapter 43 regulations. If this administrative regulation does not apply to a state, county, or local office of government, there will be no affect.

Other Explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (New Administrative Regulation)

401 KAR 43:040. Standards for universal waste transporters.

RELATES TO: KRS 224.10, 224.40, 224.46, CFR Part 273 Subpart D

STATUTORY AUTHORITY: KRS 224.10, 224.46-510

NECESSITY AND FUNCTION: KRS 224.46-510(1) requires the cabinet to promulgate regulations which establish standards for generators of hazardous waste by amount of waste generated. KRS 224.46-510(3) provides that the cabinet shall establish classes or categories of hazardous waste reflecting the relative degree of hazard. This chapter establishes minimum standards for persons who generate, handle, transport or receive universal waste. This administrative regulation establishes standards for transporters of universal waste.

Section 1. Applicability. This administrative regulation applies to universal waste transporters.

Section 2. Prohibitions. A universal waste transporter is:

- (1) Prohibited from disposing of universal waste; and
- (2) Prohibited from diluting or treating universal waste, except by responding to releases as provided in Section 5 of this administrative regulation.

Section 3. Waste Management. (1) A universal waste transporter shall comply with all applicable Kentucky Transportation Cabinet's regulations in 601 KAR 1:025 for transport of any universal waste that meets the definition of hazardous material in 49 CFR Subpart C. For purposes of the Transportation Cabinet's regulations, a material is considered a hazardous waste if it is subject to the Hazardous Waste Manifest Requirements of 401 KAR Chapter 33. Because universal waste does not require a hazardous waste manifest, it is not considered hazardous waste under the Transportation Cabinet's regulations.

(2) Some universal waste materials are regulated by the Transportation Cabinet as hazardous materials because they meet the criteria for one or more hazard classes specified in 49 CFR Subpart C. As universal waste shipments do not require a manifest under 401 KAR Chapter 33, they shall not be described by the DOT proper shipping name "hazardous waste, (I) or (s), n.o.s.", nor shall the hazardous material's proper shipping name be modified by adding the

word "waste".

Section 4. Storage Time Limits. (1) A universal waste transporter shall only store the universal waste at a universal waste transfer facility for ten days or less.

(2) If a universal waste transporter stores universal waste for more than ten (10) days, the transporter becomes a universal waste handler and shall comply with the applicable requirements of 401 KAR 43:020 and 43:030 while storing the universal waste.

Section 5. Response to Releases. (1) A universal waste transporter shall immediately contain all releases of universal wastes and other residues from universal wastes.

(2) A universal waste transporter shall determine whether any material resulting from the release is hazardous waste, and if so, it is subject to all applicable requirements of 401 KAR Chapters 30 through 39. If the waste is determined to be a hazardous waste, the transporter is subject to 401 KAR Chapter 33.

Section 6. Off-site Shipments. (1) A universal waste transporter is prohibited from transporting the universal waste to a place other than a universal waste handler, a destination facility, or a foreign destination.

(2) If the universal waste being shipped off-site meets the Transportation Cabinet's definition of hazardous materials under 49 CFR Subpart C, the shipment shall be properly described on a shipping paper in accordance with the applicable regulations under 49 CFR Subpart C.

Section 7. Exports. A universal waste transporter transporting a shipment of universal waste to a foreign destination may not accept a shipment if the transporter knows the shipment does not conform to the EPA Acknowledgment of Consent. In addition the transporter shall ensure that:

- (1) A copy of the EPA Acknowledgment of Consent accompanies the shipment; and
- (2) The shipment is delivered to the facility designated by the person initiating the shipment.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. upon

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request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed regulation affects transporters of universal wastes, which includes: batteries; pesticides; thermostats; and spent mercury containing lamps.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: One commenter asked that spent mercury containing lamps that are being shipped be allowed to use a bill of lading rather than a hazardous waste manifest. The cabinet responded by adopting the EPA's Universal Waste Rule in that with that rule, a bill of lading will be an acceptable method for tracking these shipments. The Universal Waste Regulations are being established to address hazardous waste that can be described as low toxicity and high volume. These wastes include: certain batteries, pesticides, and thermostats, as well as spent mercury containing lamps. Due to the nature of these wastes, the cabinet has proposed standards that are less stringent than existing hazardous waste standards. This will encourage proper management of these wastes, reduce disposal costs for hazardous waste facilities, and provide consistency with existing federal standards.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: One commenter was concerned about having to report spent mercury containing lamps on the hazardous waste annual report and the annual tax assessment. This commenter also suggested that hazardous waste generators be allowed to store used lamps for up to one year provided: The generator has a contract for lamp recycling and an active recycling program; and the generator institutes safety practices that include safe handling and record keeping of the lamps. The cabinet has adopted the Universal Waste Rule, adding spent mercury containing lamps to the universal waste list. Consistent with this rule, handlers will be allowed to accumulate universal waste for up to one year from the date the waste was generated or received from another handler. Universal waste may be accumulated for more than one year if such activity is solely for the purpose of accumulation as necessary to facilitate proper recovery, treatment, or disposal. In addition, since universal waste is a hazardous waste, spent mercury containing lamps, as well as all other universal waste, would have to be included on the hazardous waste annual report and for the annual hazardous waste assessment. KRS 224.46-580(7) mandates that an assessment be placed upon every generator of hazardous waste and that payment therefore be accompanied by a report or return prescribed by the cabinet. The cabinet cannot alter statutory requirements by regulation. Another commenter wanted the cabinet to allow consolidation points for generators of spent mercury containing lamps if neither storage space nor trained personnel are available at the generation

site. The cabinet's response was once again consistent with the Universal Waste Rule: A universal waste handler may send his universal waste to another universal waste handler for accumulation purposes, as provided in this administrative regulation.

2. Second and subsequent years: Same as mentioned above.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First Year: The existing staff will have an increased workload in order to process the newly regulated entities.

2. Continuing costs or savings: Once the new entities are processed, there will be no extra costs.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs.

b. Reporting and paperwork requirements: There are no additional paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants are to be used for the implementation and enforcement of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: This administrative regulation will be implemented throughout all of Kentucky.

b. Kentucky: One commenter requested recognition for their recycling of spent mercury containing lamps. The cabinet currently holds an annual Governor's Conference on the Environment, at which time the Governor's Environmental Excellence Awards are presented to individuals, organizations, and industries who have made outstanding contributions to preserve and protect Kentucky's natural resources and the environment. This may include those who make extra efforts to recycle rather than dispose such wastes as mercury containing lamps.

7. Assessment of alternative methods; reasons why alternatives were rejected: Unlike the federal EPA, the cabinet accepted the alternative of including mercury containing lamps as universal wastes in response to comments to the Notice of Intent.

8. Assessment of expected benefits of the administrative regulation: The Universal Waste Regulations are being established to address hazardous waste that can be described as low toxicity and high volume. These wastes include: batteries, pesticides, thermostats, and spent mercury containing lamps. Due to the nature of these wastes, the cabinet has proposed standards that are less stringent than existing hazardous waste standards. This will encourage proper management of these wastes and provide consistency with existing federal standards.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: The implementation of this regulation will maintain protection of public health and environmental welfare across the commonwealth.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Yes, detrimental effects could occur.

c. If detrimental effect would result, explain detrimental effect: Improper management of universal waste could harm public health and the environment.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, policies, or regulations that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Yes, tiering was used. This administrative regulation applies persons who manage universal wastes (batteries, pesticides, thermostats, and spent mercury containing lamps). Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed regulation establishes management standards for transporters of universal wastes, which include: certain batteries; pesticides; and thermostats; as well as spent mercury-containing lamps. This regulation is necessary to maintain consistency between state and federal programs and to provide regulatory relief to managers of certain wastes.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Notapplicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that is a transporter of a universal waste (batteries, pesticides, thermostats, and spent mercury containing lamps).

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): State, county, or local government offices that manage universal wastes should save money due to the promulgation of 401 KAR Chapter 43 regulations. If this administrative regulation does not apply to a state, county, or local office of government, there will be no affect.

Other Explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (New Administrative Regulation)

401 KAR 43:050. Standards for destination facilities.

RELATES TO: KRS 224.10, 224.40, 224.46, 40 CFR Part 273 Subpart E

STATUTORY AUTHORITY: KRS 224.10, 224.46-510

NECESSITY AND FUNCTION: KRS 224.46-510(1) requires the cabinet to promulgate regulations which establish standards for generators of hazardous waste by amount of waste generated. KRS 224.46-510(3) provides that the cabinet shall establish classes or categories of hazardous waste reflecting the relative degree of hazard. This chapter establishes minimum standards for persons who generate, handle, transport or receive universal waste. This administrative regulation establishes standards for destination facilities of universal wastes.

Section 1. Applicability. (1) The owner or operator of a destination facility is subject to all applicable requirements of 401 KAR Chapters 34 through 39, and the notification requirements of KRS 224.01-400.

(2) The owner or operator of a destination facility that recycles a particular universal waste without storing that universal waste before it is recycled shall comply with Section 6(3)(b) of 401 KAR 31:010.

Section 2. Off-site Shipments. (1) The owner or operator of a destination facility is prohibited from sending or taking universal waste to a place other than another destination facility or a foreign destination.

(2) The owner or operator of a destination facility may reject a shipment containing universal waste, or a portion of a shipment containing universal waste. If the owner or operator of the destination facility rejects a shipment or a portion of a shipment, he shall contact the shipper to notify him of the rejection and to discuss reshipment of the load. The owner or operator of the destination facility shall:

(a) Send the shipment back to the original shipper; or

(b) If agreed to by both the shipper and the owner or operator of the destination facility, send the shipment to another destination facility.

(3) If the owner or operator of a destination facility receives a shipment containing hazardous waste that is not a universal waste, the owner or operator of the destination facility shall immediately notify the cabinet of the illegal shipment, and provide the name, address, and phone number of the shipper. The cabinet will provide instructions for managing the hazardous waste.

(4) If the owner or operator of a destination facility receives a shipment of nonhazardous, nonuniversal waste, the owner or operator shall manage the waste in any way that is in compliance with applicable federal or state waste regulations.

Section 3. Tracking Universal Waste Shipments. (1) The owner or operator of a destination facility shall keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The record for each shipment of universal waste received shall include the following information:

(a) The name and address of the universal waste handler, destination facility, or foreign shipper from whom the universal waste was sent;

(b) The quantity of each type of universal waste received (for example, batteries, pesticides, thermostats, lamps);

(c) The date of receipt of the shipment of universal waste.

(2) The owner or operator of a destination facility shall retain the records described in subsection (1) of this section for at least three

(3) years from the date of receipt of a shipment of universal waste.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed regulation affects owners and operators of destination facilities that manage universal wastes, which includes: batteries; pesticides; thermostats; and spent mercury containing lamps.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: One commenter asked that spent mercury containing lamps that are being shipped be allowed to use a bill of lading rather than a hazardous waste manifest. The cabinet responded by adopting the EPA's Universal Waste Rule in that with that rule, a bill of lading will be an acceptable method for tracking these shipments. The Universal Waste Regulations are being established to address hazardous waste that can be described as low toxicity and high volume. These wastes include: certain batteries, pesticides, and thermostats, as well as spent mercury containing lamps. Due to the nature of these wastes, the cabinet has proposed standards that are less stringent than existing hazardous waste standards. This will encourage proper management

of these wastes, reduce disposal costs for hazardous waste facilities, and provide consistency with existing federal standards.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: One commenter was concerned about having to report spent mercury containing lamps on the hazardous waste annual report and the annual tax assessment. This commenter also suggested that hazardous waste generators be allowed to store used lamps for up to one year provided: The generator has a contract for lamp recycling and an active recycling program; and the generator institutes safety practices that include safe handling and record keeping of the lamps. The cabinet has adopted the Universal Waste Rule, adding spent mercury containing lamps to the universal waste list. Consistent with this rule, handlers will be allowed to accumulate universal waste for up to one year from the date the waste was generated or received from another handler. Universal waste may be accumulated for more than one year if such activity is solely for the purpose of accumulation as necessary to facilitate proper recovery, treatment, or disposal. In addition, since universal waste is a hazardous waste, spent mercury containing lamps, as well as all other universal waste, would have to be included on the hazardous waste annual report and for the annual hazardous waste assessment. KRS 224.46-580(7) mandates that an assessment be placed upon every generator of hazardous waste and that payment therefore be accompanied by a report or return prescribed by the cabinet. The cabinet cannot alter statutory requirements by regulation. Another commenter wanted the cabinet to allow consolidation points for generators of spent mercury containing lamps if neither storage space nor trained personnel are available at the generation site. The cabinet's response was once again consistent with the Universal Waste Rule: A universal waste handler may send his universal waste to another universal waste handler for accumulation purposes, as provided in this administrative regulation.

2. Second and subsequent years: Same as mentioned above.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First Year: The existing staff will have an increased workload in order to process the newly regulated entities.

2. Continuing costs or savings: Once the new entities are processed, there will be no extra costs.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs.

b. Reporting and paperwork requirements: There are no additional paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants are to be used for the implementation and enforcement of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: This administrative regulation will be implemented throughout all of Kentucky.

b. Kentucky: One commenter requested recognition for their recycling of spent mercury containing lamps. The cabinet currently holds an annual Governor's Conference on the Environment, at which time the Governor's Environmental Excellence Awards are presented to individuals, organizations, and industries who have made outstanding contributions to preserve and protect Kentucky's natural resources and the environment. This may include those who make extra efforts to recycle rather than dispose such wastes as mercury containing lamps.

7. Assessment of alternative methods; reasons why alternatives

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were rejected: Unlike the federal EPA, the cabinet accepted the alternative of including mercury containing lamps as universal wastes in response to comments to the Notice of Intent.

8. Assessment of expected benefits of the administrative regulation: The Universal Waste Regulations are being established to address hazardous waste that can be described as low toxicity and high volume. These wastes include: batteries, pesticides, thermostats, and spent mercury containing lamps. Due to the nature of these wastes, the cabinet has proposed standards that are less stringent than existing hazardous waste standards. This will encourage proper management of these wastes and provide consistency with existing federal standards.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: The implementation of this regulation will maintain protection of public health and environmental welfare across the commonwealth.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Yes, detrimental effects could occur.

c. If detrimental effect would result, explain detrimental effect: Improper management of universal waste could harm public health and the environment.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, policies, or regulations that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Yes, tiering was used. This administrative regulation applies persons who manage universal wastes (batteries, pesticides, thermostats, and spent mercury containing lamps). Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed regulation establishes management standards for destination facilities that handle universal wastes, which include: certain batteries; pesticides; and thermostats; as well as spent mercury-containing lamps. This regulation is necessary to maintain consistency between state and federal programs and to provide regulatory relief to managers of certain wastes.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a

local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that is a destination facility for universal wastes (batteries, pesticides, thermostats, and spent mercury containing lamps).

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): State, county, or local government offices that manage universal wastes should save money due to the promulgation of 401 KAR Chapter 43 regulations. If this administrative regulation does not apply to a state, county, or local office of government, there will be no affect.

Other Explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (New Administrative Regulation)

401 KAR 43:060. Import requirements.

RELATES TO: KRS 224.10, 224.40, 224.46, 40 CFR Part 273 Subpart F

STATUTORY AUTHORITY: KRS 224.10, 224.46-510

NECESSITY AND FUNCTION: KRS 224.46-510(1) requires the cabinet to promulgate regulations which establish standards for generators of hazardous waste by amount of waste generated. KRS 224.46-510(3) provides that the cabinet shall establish classes or categories of hazardous waste reflecting the relative degree of hazard. This chapter establishes minimum standards for persons who generate, handle, transport or receive universal waste. This administrative regulation applies to persons managing universal waste that is imported from a foreign country.

Section 1. Imports. Persons managing universal waste that is imported from a foreign country into the United States are subject to the applicable requirements of this chapter, immediately after the waste enters the United States, as indicated below:

(1) A universal waste transporter is subject to the universal waste transporter requirements of 401 KAR 43:040.

(2) A universal waste handler is subject to the small or large quantity handler of universal waste requirements of 401 KAR 43:020 and 43:030, as applicable.

(3) An owner or operator of a destination facility is subject to the destination facility requirements of 401 KAR 43:050.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this

proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed regulation affects importers of universal wastes, which includes: batteries; pesticides; thermostats; and spent mercury containing lamps.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: One commenter asked that spent mercury containing lamps that are being shipped be allowed to use a bill of lading rather than a hazardous waste manifest. The cabinet responded by adopting the EPA's Universal Waste Rule in that with that rule, a bill of lading will be an acceptable method for tracking these shipments. The Universal Waste Regulations are being established to address hazardous waste that can be described as low toxicity and high volume. These wastes include: certain batteries, pesticides, and thermostats, as well as spent mercury containing lamps. Due to the nature of these wastes, the cabinet has proposed standards that are less stringent than existing hazardous waste standards. This will encourage proper management of these wastes, reduce disposal costs for hazardous waste facilities, and provide consistency with existing federal standards.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: One commenter was

concerned about having to report spent mercury containing lamps on the hazardous waste annual report and the annual tax assessment. This commenter also suggested that hazardous waste generators be allowed to store used lamps for up to one year provided: The generator has a contract for lamp recycling and an active recycling program; and the generator institutes safety practices that include safe handling and record keeping of the lamps. The cabinet has adopted the Universal Waste Rule, adding spent mercury containing lamps to the universal waste list. Consistent with this rule, handlers will be allowed to accumulate universal waste for up to one year from the date the waste was generated or received from another handler. Universal waste may be accumulated for more than one year if such activity is solely for the purpose of accumulation as necessary to facilitate proper recovery, treatment, or disposal. In addition, since universal waste is a hazardous waste, spent mercury containing lamps, as well as all other universal waste, would have to be included on the hazardous waste annual report and for the annual hazardous waste assessment. KRS 224.46-580(7) mandates that an assessment be placed upon every generator of hazardous waste and that payment therefore be accompanied by a report or return prescribed by the cabinet. The cabinet cannot alter statutory requirements by regulation. Another commenter wanted the cabinet to allow consolidation points for generators of spent mercury containing lamps if neither storage space nor trained personnel are available at the generation site. The cabinet's response was once again consistent with the Universal Waste Rule: A universal waste handler may send his universal waste to another universal waste handler for accumulation purposes, as provided in this administrative regulation.

2. Second and subsequent years: Same as mentioned above.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First Year: The existing staff will have an increased workload in order to process the newly regulated entities.

2. Continuing costs or savings: Once the new entities are processed, there will be no extra costs.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs.

b. Reporting and paperwork requirements: There are no additional paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants are to be used for the implementation and enforcement of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: This administrative regulation will be implemented throughout all of Kentucky.

b. Kentucky: One commenter requested recognition for their recycling of spent mercury containing lamps. The cabinet currently holds an annual Governor's Conference on the Environment, at which time the Governor's Environmental Excellence Awards are presented to individuals, organizations, and industries who have made outstanding contributions to preserve and protect Kentucky's natural resources and the environment. This may include those who make extra efforts to recycle rather than dispose such wastes as mercury containing lamps.

7. Assessment of alternative methods; reasons why alternatives were rejected: Unlike the federal EPA, the cabinet accepted the alternative of including mercury containing lamps as universal wastes in response to comments to the Notice of Intent.

8. Assessment of expected benefits of the administrative regulation: The Universal Waste Regulations are being established to address hazardous waste that can be described as low toxicity and high volume. These wastes include: batteries, pesticides, thermostats,

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and spent mercury containing lamps. Due to the nature of these wastes, the cabinet has proposed standards that are less stringent than existing hazardous waste standards. This will encourage proper management of these wastes and provide consistency with existing federal standards.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: The implementation of this regulation will maintain protection of public health and environmental welfare across the commonwealth.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Yes, detrimental effects could occur.

c. If detrimental effect would result, explain detrimental effect: Improper management of universal waste could harm public health and the environment.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, policies, or regulations that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Yes, tiering was used. This administrative regulation applies persons who manage universal wastes (batteries, pesticides, thermostats, and spent mercury containing lamps). Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed regulation establishes management standards for importers of universal wastes, which include: certain batteries; pesticides; and thermostats; as well as spent mercury-containing lamps. This regulation is necessary to maintain consistency between state and federal programs and to provide regulatory relief to managers of certain wastes.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that are importers of universal wastes (batteries, pesticides, thermostats, and spent mercury containing lamps).

3. State the aspect or service of local government to which this

administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): State, county, or local government offices that manage universal wastes should save money due to the promulgation of 401 KAR Chapter 43 regulations. If this administrative regulation does not apply to a state, county, or local office of government, there will be no affect.

Other Explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (New Administrative Regulation)

401 KAR 43:070. Petitions to include other wastes under 401 KAR Chapter 43.

RELATES TO: KRS 224.10, 224.40, 224.46, 401 KAR Chapter 31, 40 CFR Part 273 Subpart G

STATUTORY AUTHORITY: KRS 224.10, 224.46-510

NECESSITY AND FUNCTION: KRS 224.46-510(1) requires the cabinet to promulgate regulations which establish standards for generators of hazardous waste by amount of waste generated. KRS 224.46-510(3) provides that the cabinet shall establish classes or categories of hazardous waste reflecting the relative degree of hazard. This chapter establishes minimum standards for persons who generate, handle, transport or receive universal waste. This administrative regulation establishes procedures for petitioning to include other wastes as universal wastes under this chapter.

Section 1. General. (1) Any person seeking to add a hazardous waste or a category of hazardous waste to this chapter may petition for a regulatory amendment under this administrative regulation and Sections 1 and 7 of 401 KAR 31:060.

(2) To be successful, the petitioner shall demonstrate to the satisfaction of the cabinet that regulation under the universal waste regulations of this chapter is: appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. The petition shall include the information required by Section 1(2) of 401 KAR 31:060. The petition shall also address as many of the factors listed in Section 2 of this administrative regulation as are appropriate for the waste or waste category addressed in the petition.

(3) The cabinet will evaluate petitions using the factors listed in Section 2 of this administrative regulation. The cabinet will grant or deny a petition using the factors listed in Section 2 of this administrative regulation. The decision will be based on the weight of evidence showing that regulation under this chapter is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

Section 2. Factors for Petitions to Include Other Wastes under 401 KAR Chapter 43. (1) The waste or category of waste, as generated by a wide variety of generators, is listed in 401 KAR 31:040, or (if not listed) a proportion of the waste stream exhibits one or more characteristics of hazardous waste identified in 401 KAR 31:030. When a characteristic waste is added to the universal waste regulations of this chapter by using a generic name to identify the waste category (for example, batteries), the definition of universal waste will be amended to include only the hazardous waste portion of the waste category (for example, hazardous waste batteries). Thus, only the portion of the waste stream that does exhibit one or more characteristics (that is, hazardous waste) is subject to the universal waste regulations of this chapter;

(2) The waste or category of waste is not exclusive to a specific industry or group of industries, is commonly generated by a wide variety of types of establishments (including, for example, households, retail and commercial businesses, office complexes, conditionally exempt small quantity generators, small businesses, government organizations, as well as large industrial facilities);

(3) The waste or category of waste is generated by a large number of generators (for example, more than 1,000 nationally) and is frequently generated in relatively small quantities by each generator;

(4) Systems to be used for collecting the waste or category of waste (including packaging, marking, and labeling practices) would ensure close stewardship of the waste;

(5) The risk posed by the waste or category of waste during accumulation and transport is relatively low compared to other hazardous wastes, and specific management standards proposed or referenced by the petitioner (for example, waste management requirements appropriate to be added to Section 4 of 401 KAR 43:020, Section 4 of 401 KAR 43:030, and Section 3 of 401 KAR 43:040; or applicable Transportation Cabinet requirements) would be protective of human health and the environment during accumulation and transport;

(6) Regulation of the waste or category of waste under this chapter will increase the likelihood that the waste will be diverted from nonhazardous waste management systems (for example, the municipal waste stream, nonhazardous industrial or commercial waste stream, municipal sewer or storm water systems) to recycling, treatment, or disposal in compliance with 401 KAR Chapters 31 through 39.

(7) Regulation of the waste or category of waste under this chapter will improve implementation of and compliance with the hazardous waste regulatory program; and

(8) Such other factors as may be appropriate.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29,

1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed regulation affects persons that manage hazardous waste and wishes to petition the cabinet to include a specific hazardous waste as a universal wastes.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: One commenter asked that spent mercury containing lamps that are being shipped be allowed to use a bill of lading rather than a hazardous waste manifest. The cabinet responded by adopting the EPA's Universal Waste Rule in that with that rule, a bill of lading will be an acceptable method for tracking these shipments. The Universal Waste Regulations are being established to address hazardous waste that can be described as low toxicity and high volume. These wastes include: certain batteries, pesticides, and thermostats, as well as spent mercury containing lamps. Due to the nature of these wastes, the cabinet has proposed standards that are less stringent than existing hazardous waste standards. This will encourage proper management of these wastes, reduce disposal costs for hazardous waste facilities, and provide consistency with existing federal standards.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: One commenter was concerned about having to report spent mercury containing lamps on the hazardous waste annual report and the annual tax assessment. This commenter also suggested that hazardous waste generators be allowed to store used lamps for up to one year provided: The generator has a contract for lamp recycling and an active recycling program; and the generator institutes safety practices that include safe handling and record keeping of the lamps. The cabinet has adopted the Universal Waste Rule, adding spent mercury containing lamps to the universal waste list. Consistent with this rule, handlers will be allowed to accumulate universal waste for up to one year from the date the waste was generated or received from another handler. Universal waste may be accumulated for more than one year if such activity is solely for the purpose of accumulation as necessary to facilitate proper recovery, treatment, or disposal. In addition, since universal waste is a hazardous waste, spent mercury containing

lamps, as well as all other universal waste, would have to be included on the hazardous waste annual report and for the annual hazardous waste assessment. KRS 224.46-580(7) mandates that an assessment be placed upon every generator of hazardous waste and that payment therefore be accompanied by a report or return prescribed by the cabinet. The cabinet cannot alter statutory requirements by regulation. Another commenter wanted the cabinet to allow consolidation points for generators of spent mercury containing lamps if neither storage space nor trained personnel are available at the generation site. The cabinet's response was once again consistent with the Universal Waste Rule: A universal waste handler may send his universal waste to another universal waste handler for accumulation purposes, as provided in this administrative regulation.

2. Second and subsequent years: Same as mentioned above.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First Year: The existing staff will have an increased workload in order to process the newly regulated entities.

2. Continuing costs or savings: Once the new entities are processed, there will be no extra costs.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs.

b. Reporting and paperwork requirements: There are no additional paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants are to be used for the implementation and enforcement of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: This administrative regulation will be implemented throughout all of Kentucky.

b. Kentucky: One commenter requested recognition for their recycling of spent mercury containing lamps. The cabinet currently holds an annual Governor's Conference on the Environment, at which time the Governor's Environmental Excellence Awards are presented to individuals, organizations, and industries who have made outstanding contributions to preserve and protect Kentucky's natural resources and the environment. This may include those who make extra efforts to recycle rather than dispose such wastes as mercury containing lamps.

7. Assessment of alternative methods; reasons why alternatives were rejected: Unlike the federal EPA, the cabinet accepted the alternative of including mercury containing lamps as universal wastes in response to comments to the Notice of Intent.

8. Assessment of expected benefits of the administrative regulation: The Universal Waste Regulations are being established to address hazardous waste that can be described as low toxicity and high volume. These wastes include: batteries, pesticides, thermostats, and spent mercury containing lamps. Due to the nature of these wastes, the cabinet has proposed standards that are less stringent than existing hazardous waste standards. This will encourage proper management of these wastes and provide consistency with existing federal standards.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: The implementation of this regulation will maintain protection of public health and environmental welfare across the commonwealth.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Yes, detrimental effects could occur.

c. If detrimental effect would result, explain detrimental effect: Improper management of universal waste could harm public health and the environment.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, policies, or regulations that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Yes, tiering was used. This administrative regulation applies persons who manage universal wastes (batteries, pesticides, thermostats, and spent mercury containing lamps). Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed regulation establishes standards for petitioning the cabinet to include specific hazardous wastes as a universal waste. This regulation is necessary to maintain consistency between state and federal programs and to provide regulatory relief to managers of certain wastes.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that manages a hazardous waste and wishes to petition the cabinet to include a specific hazardous waste as a universal waste.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): State, county, or local government offices that manage universal wastes should save money due to the promulgation

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of 401 KAR Chapter 43 regulations. If this administrative regulation does not apply to a state, county, or local office of government, there will be no affect.

Other Explanation: None

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(New Administrative Regulation)**

401 KAR 44:005. Definitions related to 401 KAR Chapter 44.

RELATES TO: KRS 224.10, 224.40, 224.43, 224.46, 224.50, 40 CFR Part 279 Subpart A

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510, 224.50-545

NECESSITY AND FUNCTION: To implement the provisions of KRS 224.50-545. This administrative regulation defines essential terms that are used in this chapter.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or otherwise specifically indicated by context, terms in 401 KAR Chapter 44 shall have the meanings given in this Section.

(1) "Aboveground tank" means a tank used to store or process used oil that is not an underground storage tank as defined in 401 KAR 42:005.

(2) "Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

(3) "Do-it-yourselfer used oil collection center" means any site or facility that accepts/aggregates and stores used oil collected only from household do-it-yourselfers.

(4) "Existing tank" means a tank that is used for the storage or processing of used oil and that is in operation, or for which installation has commenced on or prior to the effective date of the authorized used oil program for the state in which the tank is located. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin installation of the tank and if either

(a) A continuous on-site installation program has begun; or

(b) The owner or operator has entered into contractual obligations - which cannot be canceled or modified without substantial loss - for installation of the tank to be completed within a reasonable time.

(5) "Household 'do-it-yourselfer' used oil" means oil that is derived from households, such as used oil generated by individuals who generate used oil through the maintenance of their personal vehicles.

(6) "Household 'do-it-yourselfer' used oil generator" means an individual who generates household "do-it-yourselfer" used oil.

(7) "Marketers" means persons who market used oil fuel.

(8) "New tank" means a tank that will be used to store or process used oil and for which installation has commenced after the effective date of the authorized used oil program for the State in which the tank is located.

(9) "Petroleum refining facility" means an establishment primarily engaged in producing gasoline, kerosine, distillate fuel oils, residual fuel oils, and lubricants, through fractionation, straight distillation of crude oil, redistillation of unfinished petroleum derivatives, cracking or other processes.

(10) "Processing" means chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used oil-derived product. Processing includes, but is not limited to: blending used oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation and re-refining.

(11) "Recycle" shall have the same meaning as KRS 224.50-545.

(12) "Re-refined oil" shall have the same meaning as KRS 224.50-545.

(13) "Re-refining distillation bottoms" means the heavy fraction produced by vacuum distillation of filtered and dehydrated used oil. The composition of still bottoms varies with column operation and feedstock.

(14) "Used oil" shall have the same meaning as KRS 224.50-545.

(15) "Used oil aggregation point" means any site or facility that accepts, aggregates, and/or stores used oil collected only from other used oil generation sites owned or operated by the owner or operator of the aggregation point, from which used oil is transported to the aggregation point in shipments of no more than 55 gallons. Used oil aggregation points may also accept used oil from household do-it-yourselfers.

(16) "Used oil burner" means a facility where used oil not meeting the specification requirements in Section 2 of 401 KAR 44:010 is burned for energy recovery in devices identified in Section 2 of 401 KAR 44:060.

(17) "Used oil collection center" means any site or facility that is registered, licensed, permitted, or recognized by a state, county, or municipal government to manage used oil and accepts or aggregates and stores used oil collected from used oil generators regulated under 401 KAR 43:030 who bring used oil to the collection center in shipments of no more than 55 gallons under the provisions of Section 5 of 44:020. Used oil collection centers may also accept used oil from household do-it-yourselfers.

(18) "Used oil fuel marketer" means any person who conducts either of the following activities:

(a) Directs a shipment of off-specification used oil from their facility to a used oil burner; or

(b) First claims that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in Section 2 of 401 KAR 44:010.

(19) "Used oil generator" means any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.

(20) "Used oil processor or re-refiner" means a facility that processes used oil.

(21) "Used oil transfer facility" means any transportation related facility including loading docks, parking areas, storage areas and other areas where shipments of used oil are held for more than twenty-four (24) hours and not longer than thirty-five (35) days during the normal course of transportation or prior to an activity performed pursuant to Section 1(2)(b) of 401 KAR 44:020. Transfer facilities that store used oil for more than 35 days are subject to regulation under 401 KAR 44:050.

(22) "Used oil transporter" means any person who transports used oil, any person who collects used oil from more than one (1) generator and transports the collected oil, and owners and operators of used oil transfer facilities. Used oil transporters may consolidate or aggregate loads of used oil for purposes of transportation but, with the following exception, may not process used oil. Transporters may conduct incidental processing operations that occur in the normal course of used oil transportation (e.g., settling and water separation), but that are not designed to produce (or make more amenable for production of) used oil derived products or used oil fuel.

Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by context, acronyms and abbreviations used in 401 KAR Chapter 44 shall have the meaning as identified in Table 1 of this administrative regulation.

Table 1. Acronyms and Abbreviations.

CFC	Chlorofluorocarbon
CFR	Code of Federal Regulations
DEP	Kentucky Department for Environmental Protec-

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	tion
DIY	Do-it-yourselfer
DOT	United States Department of Transportation
EPA	United States Environmental Protection Agency
KAR	Kentucky Administrative Regulation
KRS	Kentucky Revised Statute
PCB	Polychlorinated biphenyl
ppm	parts per million
SPCC	Spill Prevention, Control, and Countermeasures Plan

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: This regulation does not affect any entities, because it only defines terms used in the regulation. The regulation was promulgated to comply with KRS 13A.222.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any

effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First Year: The cabinet will experience no additional costs or savings by promulgating this regulation.

2. Continuing costs or savings: No requirements have been imposed to affect costs and savings.

3. Additional factors increasing or decreasing costs: There will be no additional factors affecting costs.

b. Reporting and paperwork requirements: There will be no extra paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on the state and local revenue with the promulgation of this regulation.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No costs are imposed with the promulgation of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: There were no other alternatives that would achieve compliance with KRS 13A.222.

8. Assessment of expected benefits of the administrative regulation: The benefit is having the definitions clearly stated at the beginning of each chapter.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Not applicable since no requirements are imposed.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. **TIERING:** Is tiering applied? Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments establish definitions of used oil terms and the clarification of certain definitions. This regulation is necessary to maintain consistency between state and federal programs.

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3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that manages used oil.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. This administrative regulation establishes definitions for all terms within 401 KAR Chapter 44. These terms are assimilated from existing state and federal regulatory definitions and existing statutory definitions where applicable.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): Because this administrative regulation only establishes definitions for 401 KAR Chapter 44, this administrative regulation will not affect state, county, or local expenditures.

Other Explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (New Administrative Regulation)

401 KAR 44:010. Applicability.

RELATES TO: KRS 224.10, 224.40, 224.46, 224.50, 40 CFR Part 279 Subpart B

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510, 224.46-530, 224.50-545

NECESSITY AND FUNCTION: This chapter implements the provisions of KRS 224.46-530 and 224.50-545. This administrative regulation identifies materials that are subject to regulation as used oil under this chapter.

Section 1. Applicability. This administrative regulation identifies those materials which are subject to regulation as used oil under this chapter. This administrative regulation also identifies some materials that are not subject to regulation as used oil under this chapter, and indicates whether these materials may be subject to regulation as hazardous waste under 401 KAR Chapters 31 through 39.

(1) Used oil. The cabinet presumes that used oil is to be recycled unless a used oil handler disposes of used oil, or sends used oil for disposal. Except as provided in Section 2 of this administrative regulation, the requirements of this chapter apply to used oil, and to

materials identified in this section as being subject to regulation as used oil, whether or not the used oil or material exhibits any characteristics of hazardous waste identified in 401 KAR 31:030.

(2) Mixtures of used oil and hazardous waste.

(a) Listed hazardous waste.

1. Mixtures of used oil and hazardous waste that is listed in 401 KAR 31:040 are subject to regulation as hazardous waste under 401 KAR Chapters 31 through 39, rather than as used oil under this chapter.

2. Rebuttable presumption for used oil. Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in 401 KAR 31:040. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from SW-846, Edition III, which is incorporated in 40 CFR 260.11, which is adopted in Section 3 of 401 KAR 30:010, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in 401 KAR 31:170).

a. The rebuttable presumption does not apply to metalworking oils or fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in Section 5(3) of 401 KAR 44:020, to reclaim metalworking oils or fluids. The presumption does apply to metalworking oils or fluids if such oils or fluids are recycled in any other manner, or disposed.

b. The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(b) Characteristic hazardous waste. Mixtures of used oil and hazardous waste where the hazardous waste solely exhibits one or more of the hazardous waste characteristics identified in 401 KAR 31:030 and mixtures of used oil and hazardous waste where the hazardous waste is listed in 401 KAR 31:040 solely because it exhibits one (1) or more of the characteristics of hazardous waste identified in 401 KAR 31:030 are subject to:

1. Except as provided in paragraph (b)3 of this subsection, regulation as hazardous waste under 401 KAR Chapters 31 through 39 rather than as used oil under this chapter, if the resultant mixture exhibits any characteristics of hazardous waste identified in 401 KAR 31:030; or

2. Mixtures of used oil and hazardous waste where the hazardous waste solely exhibits one (1) or more of the hazardous waste characteristics identified in 401 KAR 31:030, and mixtures of used oil and hazardous waste that are listed in 401 KAR 31:040 solely because it exhibits one or more of the characteristics of hazardous waste identified in 401 KAR 31:030, shall comply with the regulatory requirements applicable to hazardous waste mixtures as set forth in 401 KAR Chapters 31 through 39.

3. Regulation as used oil under this chapter, if the mixture is of used oil and a waste that is hazardous solely because it exhibits the characteristic of ignitability (for example, ignitable-only mineral spirits), provided that the resultant mixture does not exhibit the characteristic of ignitability under Section 2 of 401 KAR 31:030.

(c) Conditionally exempt small quantity generator hazardous waste. Mixtures of used oil and conditionally exempt small quantity generator hazardous waste regulated under Section 5 of 401 KAR 31:010 are subject to regulation as used oil under this chapter.

(3) Materials containing or otherwise contaminated with used oil.

(a) Except as provided in paragraph (b) of this subsection, materials containing or otherwise contaminated with used oil from which the used oil has been properly drained or removed to the extent possible such that no visible signs of free-flowing oil remain in or on the material:

1. Are not used oil and thus not subject to this chapter, and

2. If applicable are subject to the hazardous waste regulations of 401 KAR Chapters 31 through 39.

(b) Materials containing or otherwise contaminated with used oil that are burned for energy recovery are subject to regulation as used oil under this chapter.

(c) Used oil drained or removed from materials containing or otherwise contaminated with used oil is subject to regulation as used oil under this chapter.

(4) Mixtures of used oil with products.

(a) Except as provided in paragraph (b) of this subsection, mixtures of used oil and fuels or other fuel products are subject to regulation as used oil under this chapter.

(b) Mixtures of used oil and diesel fuel mixed on-site by the generator of the used oil for use in the generator's own vehicles are not subject to this chapter once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil is subject to the requirements of 401 KAR 44:020.

(5) Materials derived from used oil.

(a) Materials that are reclaimed from used oil that are used beneficially and are not burned for energy recovery or used in a manner constituting disposal (for example, re-refined lubricants) are:

1. Not used oil and thus are not subject to this chapter, and

2. Not wastes and are thus not subject to the hazardous waste regulations of 401 KAR Chapters 31 through 39 as provided in Section 3(3)(b)1. of 401 KAR 31:010.

(b) Materials produced from used oil that are burned for energy recovery (for example, used oil fuels) are subject to regulation as used oil under this chapter.

(c) Except as provided in paragraph (d) of this subsection, materials derived from used oil that are disposed of or used in a manner constituting disposal are:

1. Not used oil and thus are not subject to this chapter; and

2. Are wastes and thus are subject to the hazardous waste regulations of 401 KAR Chapters 31 through 39 if the materials are listed or identified as hazardous waste.

(d) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products are not subject to this chapter.

(6) Wastewater. Wastewater, the discharge of which is subject to regulation under either Section 402 or Section 307(b) of the Clean Water Act (including wastewaters at facilities which have eliminated the discharge of wastewater), contaminated with de minimis quantities of used oil are not subject to the requirements of this chapter. For purposes of this subsection, "de minimis" quantities of used oils are defined as small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations or small amounts of oil lost to the wastewater treatment system during washing or draining operations. This exception will not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases, or to used oil recovered from wastewaters.

(7) Used oil introduced into crude oil pipelines or a petroleum refining facility.

(a) Used oil mixed with crude oil or natural gas liquids (for example, in a production separator or crude oil stock tank) for insertion into a crude oil pipeline is exempt from the requirements of this chapter. The used oil is subject to the requirements of this chapter prior to the mixing of used oil with crude oil or natural gas liquids.

(b) Mixtures of used oil and crude oil or natural gas liquids containing less than one percent used oil that are being stored or transported to a crude oil pipeline or petroleum refining facility for insertion into the refining process at a point prior to crude distillation or catalytic cracking are exempt from the requirements of this chapter.

(c) Used oil that is inserted into the petroleum refining facility process before crude distillation or catalytic cracking without prior mixing with crude oil is exempt from the requirements of this chapter

provided that the used oil constitutes less than one percent of the crude oil feed to any petroleum refining facility process unit at any given time. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of this chapter.

(d) Except as provided in paragraph (e) of this subsection, used oil that is introduced into a petroleum refining facility process after crude distillation or catalytic cracking is exempt from the requirements of this chapter only if the used oil meets the specifications of Section 2 of this administrative regulation. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of this chapter.

(e) Used oil that is incidentally captured by a hydrocarbon recovery system or wastewater treatment system as part of routine process operations at a petroleum refining facility and inserted into the petroleum refining facility process is exempt from the requirements of this chapter. This exemption does not extend to used oil which is intentionally introduced into a hydrocarbon recovery system (for example, by pouring collected used oil into the waste water treatment system).

(f) Tank bottoms from stock tanks containing exempt mixtures of used oil and crude oil or natural gas liquids are exempt from the requirements of this chapter.

(8) Used oil on vessels. Used oil produced on vessels from normal shipboard operations is not subject to this chapter until it is transported ashore.

(9) Used oil containing PCBs. In addition to the requirements of this chapter, marketers and burners of used oil who market used oil containing any quantifiable level of PCBs are subject to the requirements found at 40 CFR 761.20(e).

Section 2. Used Oil Specifications. Used oil burned for energy recovery, and any fuel produced from used oil by processing, blending, or other treatment, is subject to regulation under this chapter unless it is shown not to exceed any of the allowable levels of the constituents and properties in the specification shown in Table 1. Once used oil that is to be burned for energy recovery has been shown not to exceed any specification and the person making that showing complies with Sections 3,4 and 5(2) of 401 KAR 44:070, the used oil is no longer subject to this chapter.

Table 1-Used Oil Not exceeding Any Specification Level Is Not Subject to This Chapter When Burned for Energy Recovery¹

Constituent/property	Allowable level
Arsenic	5 ppm maximum.
Cadmium	2 ppm maximum.
Chromium	10 ppm maximum.
Lead	100 ppm maximum.
Flash point	100 °F minimum.
Total halogens	4,000 ppm maximum ²

Note: Applicable standards for the burning of used oil containing PCBs are imposed by 40 CFR 761.20(e).

FOOTNOTE: ¹The specification does not apply to mixtures of used oil and hazardous waste that continue to be regulated as hazardous waste (see Section 1(2) of this administrative regulation).

FOOTNOTE: ²Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste under the rebuttable presumption provided under Section 1(2)(a) of this administrative regulation. Such used oil is subject to 401 KAR 36:020 rather than this chapter when burned for energy recovery unless the presumption of mixing can be successfully rebutted.

Section 3. Prohibitions. (1) Surface impoundment prohibition. Used oil shall not be managed in surface impoundments or waste

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piles unless the units are subject to regulation under 401 KAR Chapters 34 or 35.

(2) Use as a dust suppressant. The use of used oil as a dust suppressant is prohibited.

(3) Burning in particular units. Off-specification used oil fuel shall be burned for energy recovery in only the following devices:

(a) Industrial furnaces;

(b) Boilers that are identified as follows:

1. Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes;

2. Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale; or

3. Used oil-fired space heaters provided that the burner meets the provisions of Section 4 of 401 KAR 44:020.

(c) Hazardous waste incinerators subject to regulation under 401 KAR 34:240 and 35:240.

Section 4. Repeal of Regulation. 401 KAR 36:050 is hereby repealed.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed regulation affects all persons that manage used oil.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First Year: The existing staff of the agency will have an increased workload in order to process the newly regulated entities.

2. Continuing costs or savings: Once the new entities are processed, there will be no extra costs.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs.

b. Reporting and paperwork requirements: There are no additional paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants are to be used for the implementation and enforcement of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were not considered. These changes are consistent with federal standards.

8. Assessment of expected benefits of the administrative regulation: These amendments provide consistency with federal standards.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Implementation of this regulation will help protect human health and the environment.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Yes, there would be detrimental effects without the implementation of this regulation.

c. If detrimental effect would result, explain detrimental effect: Improper management of used oil could result in soil and groundwater contamination that would pose a threat to public health and the environment.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, policies, or regulations that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Tiering is applied to all of Kentucky's waste management regulations, based on type and quantity of waste generated and managed and type of management activities performed by the owner or operator.

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FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed regulation adopts changes that apply to as used oil. This regulation is necessary to maintain consistency between state and federal programs. In addition, this regulation has been modified to reflect the requirements of regulation construction specified in KRS 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that are managers of used oil.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies applicable to this administrative regulation will be subject to these requirements.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (New Administrative Regulation)

401 KAR 44:020. Standards for used oil generators.

RELATES TO: KRS 224.10, 224.40, 224.46, 224.50, 40 CFR Part 279 Subpart C

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510, 224.46-530, 224.50-545

NECESSITY AND FUNCTION: This chapter implements the provisions of KRS 224.46-530 and 224.50-545. This administrative regulation establishes standards for generators of used oil.

Section 1. Applicability. (1) General. Except as provided in paragraphs (a) through (d) of this subsection, this administrative regulation applies to all used oil generators. A used oil generator is any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.

(a) Household "do-it-yourselfer" used oil generators. Household "do-it-yourselfer" used oil generators are not subject to regulation under this chapter.

(b) Vessels. Vessels at sea or at port are not subject to this administrative regulation. For purposes of this administrative regulation, used oil produced on vessels from normal shipboard operations is considered to be generated at the time it is transported ashore. The owner or operator of the vessel and the person(s) removing or accepting used oil from the vessel are cogenerators of the used oil and are both responsible for managing the waste in compliance with this administrative regulation once the used oil is transported ashore. The cogenerators shall decide among them which party will fulfill the requirements of this administrative regulation.

(c) Diesel fuel. Mixtures of used oil and diesel fuel mixed by the generator of the used oil for use in the generator's own vehicles are not subject to this chapter once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil fuel is subject to the requirements of this administrative regulation.

(d) Farmers. Farmers who generate an average of twenty-five (25) gallons per month or less of used oil from vehicles or machinery used on the farm in a calendar year are not subject to the requirements of this chapter.

(2) Other applicable provisions. Used oil generators who conduct the following activities are subject to the requirements of other applicable provisions of this chapter as indicated in paragraphs (a) through (e) of this subsection:

(a) Generators who transport used oil, except under the self-transport provisions of Section 5 of this administrative regulation, shall also comply with 401 KAR 44:040.

(b)1. Except as provided in paragraph (b)2 of this subsection, generators who process or re-refine used oil shall also comply with 401 KAR 44:050.

2. Generators who perform the following activities are not processors provided that the used oil is generated on-site and is not being sent off-site to a burner of on- or off-specification used oil fuel.

a. Filtering, cleaning, or otherwise reconditioning used oil before returning it for reuse by the generator;

b. Separating used oil from wastewater generated on-site to make the wastewater acceptable for discharge or reuse pursuant to section 402 or section 307(b) of the Clean Water Act or other applicable federal or state regulations governing the management or discharge of wastewaters;

c. Using oil mist collectors to remove small droplets of used oil from in-plant air to make plant air suitable for continued recirculation;

d. Draining or otherwise removing used oil from materials containing or otherwise contaminated with used oil in order to remove excessive oil to the extent possible pursuant to Section 1(3) of 401 KAR 44:010; or

e. Filtering, separating or otherwise reconditioning used oil before burning it in a space heater pursuant to Section 4 of this administrative regulation.

(c) Generators who burn off-specification used oil for energy recovery, except under the on-site space heater provisions of Section 4 of this administrative regulation, shall also comply with 401 KAR 44:060.

(d) Generators who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifica-

tions set forth in Section 2 of 401 KAR 44:010 shall also comply with 401 KAR 44:070.

Section 2. Hazardous Waste Mixing. (1) Mixtures of used oil and hazardous waste shall be managed in accordance with Section 1(2) of 401 KAR 44:010.

(2) The rebuttable presumption for used oil of Section 1(2)(a)2 of 401 KAR 44:010 applies to used oil managed by generators. Under the rebuttable presumption for used oil of Section 1(2)(a)2 of 401 KAR 44:010, used oil containing greater than 1,000 ppm total halogens is presumed to be a hazardous waste and thus shall be managed as hazardous waste and not as used oil unless the presumption is rebutted. However, the rebuttable presumption does not apply to certain metalworking oils or fluids and certain used oils removed from refrigeration units, as provided in Section 1(2)(a)2a of 401 KAR 44:010.

Section 3. Used Oil Storage. Used oil generators are subject to all applicable spill prevention, control and countermeasures (40 CFR Part 112) in addition to the requirements of this administrative regulation. Used oil generators are also subject to the underground storage tank (401 KAR Chapter 42) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this administrative regulation.

(1) Storage units. Used oil generators shall not store used oil in units other than tanks, containers, or units subject to regulation under 401 KAR Chapter 34 or 35.

(2) Condition of units. Containers and aboveground tanks used to store used oil at generator facilities shall be:

(a) In good condition (no severe rusting, apparent structural defects or deterioration); and

(b) Not leaking (no visible leaks).

(3) Labels.

(a) Containers and aboveground tanks used to store used oil at generator facilities shall be labeled or marked clearly with the words "Used Oil."

(b) Fill pipes used to transfer used oil into underground storage tanks at generator facilities shall be labeled or marked clearly with the words "Used Oil."

(4) Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements of 401 KAR 42:060 which has occurred after the effective date of this administrative regulation, a generator shall perform the following cleanup steps:

(a) Stop the release;

(b) Contain the released used oil;

(c) Clean up and manage properly the released used oil and other materials; and

(d) If necessary to prevent future releases, repair or replace any leaking used oil storage containers or tanks prior to returning them to service;

(e) Notify the cabinet if required by KRS 224.01-400(11) and (12); and

(f) Perform corrective action in compliance with KRS 224.01-405.

Section 4. On-site Burning in Space Heaters. Generators may burn used oil in used oil-fired space heaters provided that:

(1) The heater burns only used oil that the owner or operator generates on-site or used oil received from household do-it-yourself used oil generators;

(2) The heater is designed to have a maximum capacity of not more than 0.5 million BTU per hour; and

(3) The combustion gases from the heater are vented to the ambient air.

Section 5. Off-site Shipments. Except as provided in subsections (1) through (3) of this section, generators shall ensure that their used

oil is transported only by transporters who have obtained EPA identification numbers.

(1) Self-transportation of small amounts to approved collection centers. Generators may transport, without an EPA identification number, used oil that is generated at the generator's site and used oil collected from household do-it-yourselfers to a used oil collection center provided that:

(a) The generator transports the used oil in a vehicle owned by the generator or owned by an employee of the generator;

(b) The generator transports no more than fifty-five (55) gallons of used oil at any time; and

(c) The generator transports the used oil to a used oil collection center that is registered, licensed, permitted, or recognized by a state, county or municipal government to manage used oil.

(2) Self-transportation of small amounts to aggregation points owned by the generator. Generators may transport, without an EPA identification number, used oil that is generated at the generator's site to an aggregation point provided that:

(a) The generator transports the used oil in a vehicle owned by the generator or owned by an employee of the generator;

(b) The generator transports no more than fifty-five (55) gallons of used oil at any time; and

(c) The generator transports the used oil to an aggregation point that is owned or operated by the same generator.

(3) Tolling arrangements. Used oil generators may arrange for used oil to be transported by a transporter without an EPA identification number if the used oil is reclaimed under a contractual agreement pursuant to which reclaimed oil is returned by the processor or re-refiner to the generator for use as a lubricant, cutting oil, or coolant. The contract (known as a "tolling arrangement") shall indicate:

(a) The type of used oil and the frequency of shipments;

(b) That the vehicle used to transport the used oil to the processing or re-refining facility and to deliver recycled used oil back to the generator is owned and operated by the used oil processor or re-refiner; and

(c) That reclaimed oil will be returned to the generator.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation,

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including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed regulation affects all persons that generate used oil.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First Year: The existing staff of the agency will have an increased workload in order to process the newly regulated entities.

2. Continuing costs or savings: Once the new entities are processed, there will be no extra costs.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs.

b. Reporting and paperwork requirements: There are no additional paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants are to be used for the implementation and enforcement of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were not considered. These changes are consistent with federal standards.

8. Assessment of expected benefits of the administrative regulation: These amendments provide consistency with federal standards.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Implementation of this regulation will help protect human health and the environment.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Yes, there would be detrimental effects without the implementation of this regulation.

c. If detrimental effect would result, explain detrimental effect:

Improper management of used oil could result in soil and groundwater contamination that would pose a threat to public health and the environment.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, policies, or regulations that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Tiering is applied to all of Kentucky's waste regulations, based on type and quantity of waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed regulation adopts changes that apply to used oil generators. These changes are necessary to maintain consistency between state and federal programs. In addition, this regulation has been modified to reflect the requirements of regulation construction specified in KRS 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that generate used oil.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative

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regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (New Administrative Regulation)

401 KAR 44:030. Standards for used oil collection centers and aggregation points.

RELATES TO: KRS 224.10, 224.40, 224.46, 224.50, 40 CFR Part 279 Subpart D

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510, 224.46-530, 224.50-545

NECESSITY AND FUNCTION: This chapter implements the provisions of KRS 224.46-530 and 224.50-545. This administrative regulation establishes standards for generators of used oil collection centers and aggregation points.

Section 1. Do-it-yourselfer Used Oil Collection Centers.

(1) Applicability. This section applies to owners or operators of all do-it-yourselfer (DIY) used oil collection centers. A DIY used oil collection center is any site or facility that accepts or aggregates and stores used oil collected only from household do-it-yourselfers.

(2) DIY used oil collection center requirements. Owners or operators of all DIY used oil collection centers shall comply with the generator standards in 401 KAR 44:020.

Section 2. Used Oil Collection Centers. (1) Applicability. This section applies to owners or operators of used oil collection centers. A used oil collection center is any site or facility that accepts or aggregates and stores used oil collected from used oil generators regulated under 401 KAR 44:020 who bring used oil to the collection center in shipments of no more than fifty-five (55) gallons under the provisions of Section 5(1) of 401 KAR 44:020. Used oil collection centers may also accept used oil from household do-it-yourselfers.

(2) Used oil collection center requirements. Owners or operators of all used oil collection centers shall:

- (a) Comply with the generator standards in 401 KAR 44:020; and
- (b) Notify the Resource Conservation and Local Assistance Branch of the Division of Waste Management at (502) 564-6716 or 14 Reilly Road, Frankfort, Kentucky 40601.

Section 3. Used Oil Aggregation Points Owned by the Generator.

(1) Applicability. This section applies to owners or operators of all used oil aggregation points. A used oil aggregation point is any site or facility that accepts, aggregates, or stores used oil collected only from other used oil generation sites owned or operated by the owner or operator of the aggregation point, from which used oil is transported to the aggregation point in shipments of no more than 55 gallons under the provisions of Section 5(b) of 401 KAR 44:020. Used oil aggregation points may also accept used oil from household do-it-yourselfers.

(2) Used oil aggregation point requirements. Owners or operators of all used oil aggregation points shall comply with the generator standards in 401 KAR 44:020.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the

Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed regulation affects owners and operators of used oil centers and aggregation points.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First Year: The existing staff of the agency will have an increased workload in order to process the newly regulated entities.

2. Continuing costs or savings: Once the new entities are processed, there will be no extra costs.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs.

b. Reporting and paperwork requirements: There are no additional paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

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5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants are to be used for the implementation and enforcement of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were not considered. These changes are consistent with federal standards.

8. Assessment of expected benefits of the administrative regulation: These amendments provide consistency with federal standards.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Implementation of this regulation will help protect human health and the environment.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Yes, there would be detrimental effects without the implementation of this regulation.

c. If detrimental effect would result, explain detrimental effect: Improper management of used oil could result in soil and groundwater contamination that would pose a threat to public health and the environment.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, policies, or regulations that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Tiering is applied to all of Kentucky's waste regulations, based on type and quantity of waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed regulation adopts changes that apply to used oil collection centers and aggregation plants. These changes are necessary to maintain consistency between state and federal programs. In addition, the regulation has been modified to reflect the requirements of regulation construction specified in KRS 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a

local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that manage used oil centers and aggregation points.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the Cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (New Administrative Regulation)

401 KAR 44:040. Standards for used oil transporter and transfer facilities.

RELATES TO: KRS 224.10, 224.40, 224.46, 224.50, 40 CFR Part 279 Subpart E

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510, 224.46-530, 224.50-545

NECESSITY AND FUNCTION: This chapter implements the provisions of KRS 224.46-530 and 224.50-545. This administrative regulation establishes standards for used oil transporters and transfer facilities.

Section 1. Applicability. (1) General. Except as provided in paragraphs (a) through (d) of this subsection, this administrative regulation applies to all used oil transporters. Used oil transporters are persons who transport used oil, persons who collect used oil from more than one generator and transport the collected oil, and owners and operators of used oil transfer facilities.

(a) This administrative regulation does not apply to on-site transportation.

(b) This administrative regulation does not apply to generators who transport shipments of used oil totaling 55 gallons or less from the generator to a used oil collection center as specified in Section 5(1) of 401 KAR 44:020.

(c) This administrative regulation does not apply to generators who transport shipments of used oil totaling 55 gallons or less from the generator to a used oil aggregation point owned or operated by the same generator as specified in Section 5(2) of 401 KAR 44:020.

(d) This administrative regulation does not apply to transportation of used oil from household do-it-yourselfers to a regulated used oil generator, collection center, aggregation point, processor or re-refiner, or burner subject to the requirements of this chapter. Except as

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provided in paragraphs (a) through (c) of this subsection, this administrative regulation does, however, apply to transportation of collected household do-it-yourselfer used oil from regulated used oil generators, collection centers, aggregation points, or other facilities where household do-it-yourselfer used oil is collected.

(2) Imports and exports. Transporters who import used oil from abroad or export used oil outside of the United States are subject to the requirements of this administrative regulation from the time the used oil enters and until the time it exits the United States.

(3) Trucks used to transport hazardous waste. Unless trucks previously used to transport hazardous waste are emptied as described in Section 7 of 401 KAR 31:010 prior to transporting used oil, the used oil is considered to have been mixed with the hazardous waste and shall be managed as hazardous waste unless, under the provisions of Section 1(2) of 401 KAR 44:010, the hazardous waste and used oil mixture is determined not to be hazardous waste.

(4) Other applicable provisions. Used oil transporters who conduct the following activities are also subject to other applicable provisions of this chapter as indicated in paragraphs (a) through (e) of this subsection:

(a) Transporters who generate used oil shall also comply with 401 KAR 44:020;

(b) Transporters who process or re-refine used oil, except as provided in Section 2 of this administrative regulation, shall also comply with 401 KAR 44:050;

(c) Transporters who burn off-specification used oil for energy recovery shall also comply with 401 KAR 44:060;

(d) Transporters who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in Section 2 of 401 KAR 44:010 shall also comply with 401 KAR 44:070; and

(e) Transporters who dispose of used oil shall also comply with 401 KAR 44:080.

Section 2. Restrictions on Transporters Who Are Not Also Processors or Re-refiners. (1) Used oil transporters may consolidate or aggregate loads of used oil for purposes of transportation. However, except as provided in subsection (2) of this section, used oil transporters shall not process used oil unless they also comply with the requirements for processors or re-refiners in 401 KAR 44:050.

(2) Transporters may conduct incidental processing operations that occur in the normal course of used oil transportation (for example, settling and water separation), but that are not designed to produce (or make more amenable for production of) used oil derived products unless they also comply with the processor or re-refiner requirements in 401 KAR 44:050.

(3) Transporters of used oil that is removed from oil bearing electrical transformers and turbines and filtered by the transporter or at a transfer facility prior to being returned to its original use are not subject to the processor or re-refiner requirements in 401 KAR 44:050.

Section 3. Notification. (1) Identification numbers. Used oil transporters who have not previously complied with the notification requirements of Section 2 of 401 KAR 33:010 shall comply with these requirements and obtain an EPA identification number.

(2) Mechanics of notification. A used oil transporter who has not received an EPA identification number shall obtain one by notifying the cabinet's Hazardous Waste Branch of its used oil activity by submitting either:

(a) A completed DEP Form 7053, Notification of Hazardous Waste Transportation Activities; or

(b) A letter requesting an EPA identification number. The letter shall include the following information:

1. Transporter company name;

2. Owner of the transporter company;
3. Mailing address for the transporter;
4. Name and telephone number for the transporter point of contact;
5. Type of transport activity (that is, transport only, transport and transfer facility, transfer facility only);
6. Location of all transfer facilities at which used oil is stored; and
7. Name and telephone number for a contact at each transfer facility.

Section 4. Used Oil Transportation. (1) Deliveries. A used oil transporter shall deliver all used oil received to:

(a) Another used oil transporter, provided that the transporter has obtained an EPA identification number;

(b) A used oil processing or re-refining facility who has obtained an EPA identification number;

(c) An off-specification used oil burner facility who has obtained an EPA identification number; or

(d) An on-specification used oil burner facility.

(2) DOT Requirements. Used oil transporters shall comply with all applicable requirements under the Transportation Cabinet's regulations in 601 KAR 1:025. Persons transporting used oil that meets the definition of a hazardous material in 601 KAR 1:025 shall comply with all applicable requirements in 601 KAR 1:025.

(3) Used oil discharges.

(a) In the event of a discharge of used oil during transportation, the transporter shall take appropriate immediate action to protect human health and the environment (for example, notify local authorities, dike the discharge area).

(b) If a discharge of used oil occurs during transportation and the cabinet determines that immediate removal of the used oil is necessary to protect human health or the environment, the cabinet may authorize the removal of the used oil by transporters who do not have EPA identification numbers.

(c) A transporter who has discharged used oil shall:

1. Notify the cabinet, as required by KRS 224.01-400(11) and (12); and

2. Report to the cabinet in writing if required by KRS 224.01-400(12).

(d) A transporter shall clean up any used oil discharged that occurs during transportation or take such action as required by KRS 224.01-405 so that the used oil discharge no longer presents a hazard to human health or the environment.

Section 5. Rebuttable Presumption for Used Oil. (1) To ensure that used oil is not a hazardous waste under the rebuttable presumption of Section 1(2)(a)2. of 401 KAR 44:010, the used oil transporter shall determine whether the total halogen content of used oil being transporter or stored at a transfer facility is above or below 1,000 ppm.

(2) The transporter shall make this determination by:

(a) Testing the used oil; or

(b) Applying knowledge of the halogen content of the used oil in light of the materials or processes used.

(3) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in 401 KAR 31:040. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from SW-846, Edition III, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in 401 KAR 31:170).

(a) The rebuttable presumption does not apply to metalworking oils or fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in Section 5(3) of 401 KAR 44:020, to reclaim metalworking oils or fluids. The presumption does apply to metalworking oils or fluids if such oils or fluids are

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recycled in any other manner, or disposed.

(b) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units if the CFC are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(4) Record retention. Records of analyses conducted or information used to comply with subsections (1) through (3) of this section shall be maintained by the transporter for at least 3 years.

Section 6. Used Oil Storage at Transfer Facilities. Used oil transporters are subject to all applicable spill prevention, control and countermeasures (40 CFR part 112) in addition to the requirements of this administrative regulation. Used oil transporters are also subject to the underground storage tank (401 KAR Chapter 42) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this administrative regulation.

(1) Applicability. This section applies to used oil transfer facilities. Used oil transfer facilities are transportation related facilities including loading docks, parking areas, storage areas, and other areas where shipments of used oil are held for more than twenty-four (24) hours during the normal course of transportation and not longer than thirty-five (35) days. Transfer facilities that store used oil for more than thirty-five (35) days are subject to regulation under 401 KAR 44:050.

(2) Storage units. Owners or operators of used oil transfer facilities shall not store used oil in units other than tanks, containers, or units subject to regulation under 401 KAR Chapter 34 or 35.

(3) Condition of units. Containers and aboveground tanks used to store used oil at transfer facilities shall be:

(a) In good condition (no severe rusting, apparent structural defects or deterioration); and

(b) Not leaking (no visible leaks).

(4) Secondary containment for containers. Containers used to store used oil at transfer facilities shall be equipped with a secondary containment system.

(a) The secondary containment system shall consist of, at a minimum:

1. Dikes, berms or retaining walls; and

2. A floor. The floor shall cover the entire area within the dikes, berms, or retaining walls; or

(b) An equivalent secondary containment system.

(c) The entire containment system, including walls and floors, shall be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(5) Secondary containment for existing aboveground tanks. Existing aboveground tanks used to store used oil at transfer facilities shall be equipped with a secondary containment system.

(a) The secondary containment system shall consist of, at a minimum:

1. Dikes, berms or retaining walls; and

2. A floor. The floor shall cover the entire area within the dike, berm, or retaining wall except areas where existing portions of the tank meet the ground; or

(b) An equivalent secondary containment system.

(c) The entire containment system, including walls and floors, shall be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(6) Secondary containment for new aboveground tanks. New aboveground tanks used to store used oil at transfer facilities shall be equipped with a secondary containment system.

(a) The secondary containment system shall consist of, at a minimum:

1. Dikes, berms or retaining walls; and

2. A floor. The floor shall cover the entire area within the dike, berm, or retaining wall; or

(b) An equivalent secondary containment system.

(c) The entire containment system, including walls and floors, shall be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(7) Labels.

(a) Containers and aboveground tanks used to store used oil at transfer facilities shall be labeled or marked clearly with the words "Used Oil."

(b) Fill pipes used to transfer used oil into underground storage tanks at transfer facilities shall be labeled or marked clearly with the words "Used Oil."

(8) Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements of 401 KAR 42:060 which has occurred after the effective date of this administrative regulation, the owner or operator of a transfer facility shall perform the following cleanup steps:

(a) Stop the release;

(b) Contain the release used oil;

(c) Clean up and manage properly the released used oil and other materials;

(d) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service;

(e) Notify the cabinet if required by KRS 224.01-400(11) and (12); and

(f) Perform corrective action in compliance with KRS 224.01-405.

Section 7. Tracking. (1) Acceptance. Used oil transporters shall keep a record of each used oil shipment accepted for transport. Records for each shipment shall include:

(a) The name and address of the generator, transporter, or processor or re-refiner who provided the used oil for transport;

(b) The EPA identification number (if applicable) of the generator, transporter, or processor or re-refiner who provided the used oil for transport;

(c) The quantity of used oil accepted;

(d) The date of acceptance; and

(e)1. Except as provided in subparagraph 2 of this paragraph, the signature, dated upon receipt of the used oil, of a representative of the generator, transporter, or processor or re-refiner who provided the used oil for transport.

2. Intermediate rail transporters are not required to sign the record of acceptance.

(2) Deliveries. Used oil transporters shall keep a record of each shipment of used oil that is delivered to another used oil transporter, or to a used oil burner, processor or re-refiner, or disposal facility. Records of each delivery shall include:

(a) The name and address of the receiving facility or transporter;

(b) The EPA identification number of the receiving facility or transporter;

(c) The quantity of used oil delivered;

(d) The date of delivery;

(e)1. Except as provided in subparagraph 2. of this paragraph, the signature, dated upon receipt of the used oil, of a representative of the receiving facility or transporter.

2. Intermediate rail transporters are not required to sign the record of delivery.

(3) Exports of used oil. Used oil transporters shall maintain the records described in paragraphs(a) through (d) of this subsection for each shipment of used oil exported to any foreign country.

(4) Record retention. The records described in subsections (1) through (3) of this section shall be maintained for at least two years.

Section 8. Management of Residues. Transporters who generate residues from the storage or transport of used oil shall manage the

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residues as specified in Section 1 of 401 KAR 44:010.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed regulation affects used oil transporters and owners and operators of used oil transfer facilities.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First Year: The existing staff of the agency will have an increased workload in order to process the newly regulated entities.

2. Continuing costs or savings: Once the new entities are processed, there will be no extra costs.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs.

b. Reporting and paperwork requirements: There are no additional paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants are to be used for the implementation and enforcement of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were not considered. These changes are consistent with federal standards.

8. Assessment of expected benefits of the administrative regulation: These amendments provide consistency with federal standards.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Implementation of this regulation will help protect human health and the environment.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Yes, there would be detrimental effects without the implementation of this regulation.

c. If detrimental effect would result, explain detrimental effect: Improper management of used oil could result in soil and groundwater contamination that would pose a threat to public health and the environment.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, policies, or regulations that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Tiering is applied to all of Kentucky's waste regulations, based on type and quantity of waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed regulation adopts changes that apply to used oil transporters. This regulation is necessary to maintain consistency between state and federal programs. In addition, the regulation has been modified to reflect regulation construction specified in KRS 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this

administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that transport or transfer used oil.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(New Administrative Regulation)**

401 KAR 44:050. Standards for used oil processors and re-refiners.

RELATES TO: KRS 224.10, 224.40, 224.46, 224.50, 40 CFR Part 279 Subpart F

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510, 224.46-530, 224.50-545

NECESSITY AND FUNCTION: This chapter implements the provisions of KRS 224.46-530 and 224.50-545. This administrative regulation establishes standards for used oil processors and re-refiners.

Section 1. Applicability. (1) The requirements of this administrative regulation apply to owners and operators of facilities that process or recycle used oil. Processing means chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used oil-derived products. Processing includes, but is not limited to: blending used oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation and re-refining. The requirements of this administrative regulation do not apply to:

(a) Transporters that conduct incidental processing operations that occur during the normal course of transportation as provided in Section 2 of 401 KAR 44:040; or

(b) Burners that conduct incidental processing operations that occur during the normal course of used oil management prior to burning as provided in Section 2(2) of 401 KAR 44:060.

(2) Other applicable provisions. Used oil processors or re-refiners who conduct the following activities are also subject to the requirements of other applicable provisions of this chapter as indicated in paragraphs (a) through (e) of this subsection.

(a) Processors or re-refiners who generate used oil shall also comply with 401 KAR 44:020;

(b) Processors or re-refiners who transport used oil shall also comply with 401 KAR 44:040;

(c) Except as provided in subparagraphs 1. and 2. of this paragraph, processors or re-refiners who burn off-specification used oil for energy recovery shall also comply with 401 KAR 44:060. Processor or re-refiners burning used oil for energy recovery under the following conditions are not subject to 401 KAR 44:060:

1. The used oil is burned in an on-site space heater that meets the requirements of Section 4 of 401 KAR 44:020; or

2. The used oil is burned for purposes of processing used oil, that is considered burning incidental to used oil processing;

(d) Processors or re-refiners who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in Section 2 of 401 KAR 44:010 shall also comply with 401 KAR 44:070; and

(e) Processors or re-refiners who dispose of used oil also shall comply with 401 KAR 44:080.

Section 2. Notification. (1) Identification numbers. Used oil processors and re-refiners who have not previously complied with the notification requirements of Section 2 of 401 KAR 34:020 or Section 2 of 401 KAR 35:020 shall comply with these requirements and obtain an EPA identification number.

(2) Mechanics of notification. A used oil processor or re-refiner who has not received an EPA identification number shall obtain one by notifying the cabinet's Hazardous Waste Branch of its used oil activity by submitting either:

(a) A completed DEP Form 7037, Notification for Hazardous Waste Activity; or

(b) A letter requesting an EPA identification number. The letter shall include the following information:

1. Processor or re-refiner company name;
2. Owner of the processor or re-refiner company;
3. Mailing address for the processor or re-refiner;
4. Name and telephone number for the processor or re-refiner point of contact;
5. Type of used oil activity (that is, process only, process and re-refine);
6. Location of the processor or re-refiner facility.

Section 3. General Facility Standards. (1) Preparedness and prevention. Owners and operators of used oil processors and re-refiners facilities shall comply with the following requirements:

(a) Maintenance and operation of facility. Facilities shall be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or nonsudden release of used oil to air, soil, or surface water that may threaten human health or the environment.

(b) Required equipment. All facilities shall be equipped with the following, unless none of the hazards posed by used oil handled at the facility may require a particular kind of equipment specified in subparagraphs 1 through 4 of this paragraph:

1. An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;

2. A device, such as a telephone (immediately available at the scene of operations) or a hand-held two (2) way radio, capable of

summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams;

3. Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment and decontamination equipment; and

4. Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

(c) Testing and maintenance of equipment. All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, shall be tested and maintained as necessary to assure its proper operation in time of emergency.

(d) Access to communications or alarm system.

1. Whenever used oil is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation shall have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required in paragraph (b) of this subsection.

2. If there is ever just one employee on the premises while the facility is operating, the employee shall have immediate access to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two (2) way radio, capable of summoning external emergency assistance, unless such a device is not required in paragraph (b) of this subsection.

(e) Required aisle space. The owner or operator shall maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

(f) Arrangements with local authorities.

1. The owner or operator shall attempt to make the following arrangements, as appropriate for the type of used oil handled at the facility and the potential need for the services of these organizations:

a. Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of used oil handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes;

b. Where more than one (1) police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;

c. Agreements with state emergency response teams, emergency response contractors, and equipment suppliers; and

d. Arrangements to familiarize local hospitals with the properties of used oil handled at the facility and the types of injuries or illnesses that may result from fires, explosions, or releases at the facility.

2. Where state or local authorities decline to enter into such arrangements, the owner or operator shall document the refusal in the operating record.

(2) Contingency plan and emergency procedures. Owners and operators of used oil processing and re-refining facilities shall comply with the following requirements:

(a) Purpose and implementation of contingency plan.

1. Each owner or operator shall have a contingency plan for the facility. The contingency plan shall be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or nonsudden release of used oil.

2. The provisions of the plan shall be carried out immediately whenever there is a fire, explosion, or release of used oil that may threaten human health or the environment.

(b) Content of contingency plan.

1. The contingency plan shall describe the actions facility

personnel shall take to comply with paragraphs (a) and (f) of this subsection in response to fires, explosions, or any unplanned sudden or nonsudden release of used oil at the facility.

2. If the owner or operator has already prepared a spill prevention, control, and countermeasures (SPCC) plan in accordance with 40 CFR Part 112, or some other emergency or contingency plan, the owner or operator need only amend that plan to incorporate used oil management provisions that are sufficient to comply with the requirements of this chapter.

3. The plan shall describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to subsection (1)(f) of this section.

4. The plan shall list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see paragraph (e) of this subsection), and this list shall be kept up to date. Where more than one (1) person is listed, one (1) shall be named as primary emergency coordinator and others shall be listed in the order in which they will assume responsibility as alternates.

5. The plan shall include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list shall be kept up to date. In addition, the plan shall include the location and a physical description of each item on the list, and a brief outline of its capabilities.

6. The plan shall include an evacuation plan for facility personnel where there is a possibility that evacuation may be necessary. This plan shall describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes may be blocked by releases of used oil or fires).

(c) Copies of contingency plan. A copy of the contingency plan and all revisions to the plan shall be:

1. Maintained at the facility; and

2. Submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

(d) Amendment of contingency plan. The contingency plan shall be reviewed, and immediately amended, if necessary, whenever:

1. Applicable regulations are revised;

2. The plan fails in an emergency;

3. The facility changes in its design, construction, operation, maintenance, or other circumstances in a way that materially increases the potential for fires, explosions, or releases of used oil, or changes the response necessary in an emergency;

4. The list of emergency coordinators changes; or

5. The list of emergency equipment changes.

(e) Emergency coordinator. At all times, there shall be at least one employee either on the facility premises or on call (that is, available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator shall be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of used oil handled, the location of all records within the facility, and facility layout. In addition, this person shall have the authority to commit the resources needed to carry out the contingency plan. The emergency coordinator's responsibilities are more fully spelled out in paragraph (f) of this subsection. Applicable responsibilities for the emergency coordinator vary, depending on factors such as type and variety of used oil handled by the facility, and type and complexity of the facility.

(f) Emergency procedures.

1. Whenever there is an imminent or actual emergency situation, the emergency coordinator (or the designee when the emergency coordinator is on call) shall immediately:

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a. Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and
b. Notify appropriate State or local agencies with designated response roles if their help is needed;

c. Notify the cabinet if required by KRS 224.01-400(11) and (12).

2. Whenever there is a release, fire, or explosion, the emergency coordinator shall immediately identify the character, exact source, amount, and a real extent of any released materials. He may do this by observation or review of facility records or manifests and, if necessary, by chemical analysis.

3. Concurrently, the emergency coordinator shall assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment shall consider both direct and indirect effects of the release, fire, or explosion (for example, the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-offs from water of chemical agents used to control fire and heat-induced explosions).

4. If the emergency coordinator determines that the facility has had a release, fire, or explosion that may threaten human health, or the environment, outside the facility, he shall report his findings as follows:

a. If his assessment indicates that evacuation of local areas may be advisable, he shall immediately notify appropriate local authorities. He shall be available to help appropriate officials decide whether local areas shall be evacuated; and

b. He shall immediately notify the cabinet within twenty-four (24) hours, as required by KRS 224.01-400(11). The notification shall include:

(i) Name and telephone number of reporter;

(ii) Name and address of facility;

(iii) Time and type of incident (for example, release, fire);

(iv) Name and quantity of material(s) involved, to the extent known;

(v) The extent of injuries, if any; and

(vi) The possible hazards to human health, or the environment, outside the facility.

5. During an emergency, the emergency coordinator shall take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other used oil or hazardous waste at the facility. These measures shall include, where applicable, stopping processes and operation, collecting and containing released used oil, and removing or isolating containers.

6. If the facility stops operation in response to a fire, explosion, or release, the emergency coordinator shall monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

7. Immediately after an emergency, the emergency coordinator shall provide for recycling, storing, or disposing of recovered used oil, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility.

8. The emergency coordinator shall ensure that, in the affected area(s) of the facility:

a. No waste or used oil that may be incompatible with the released material is recycled, treated, stored, or disposed of until cleanup procedures are completed; and

b. All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

9. The owner or operator shall notify the cabinet, and appropriate State and local authorities that the facility is in compliance with subparagraphs 8a and 8b of this paragraph before operations are resumed in the affected area(s) of the facility.

10. The owner or operator shall note in the operating record the time, date and details of any incident that requires implementing the contingency plan. Within fifteen (15) days after the incident, he shall submit a written report on the incident to the cabinet. The report shall include:

a. Name, address, and telephone number of the owner or

operator;

b. Name, address, and telephone number of the facility;

c. Date, time, and type of incident (for example, fire, explosion);

d. Name and quantity of material(s) involved;

e. The extent of injuries, if any;

f. An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

g. Estimated quantity and disposition of recovered material that resulted from the incident; and

(g) Perform corrective action in compliance with KRS 224.01-405.

Section 4. Rebuttable Presumption for Used Oil. (1) To ensure that used oil managed at a processing or re-refining facility is not hazardous waste under the rebuttable presumption of Section 1(2)(a)2 of 401 KAR 44:010, the owner or operator of a used oil processing or re-refining facility shall determine whether the total halogen content of used oil managed at the facility is above or below 1,000 ppm.

(2) The owner or operator shall make this determination by:

(a) Testing the used oil; or

(b) Applying knowledge of the halogen content of the used oil in light of the materials or processes used.

(3) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in 401 KAR 31:040. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from SW-846, Edition III, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in 401 KAR 31:170).

(a) The rebuttable presumption does not apply to metalworking oils or fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking oils or fluids. The presumption does apply to metalworking oils or fluids if such oils or fluids are recycled in any other manner, or disposed.

(b) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

Section 5. Used Oil Management. Used oil processor or re-refiners are subject to all applicable Spill Prevention, Control and Countermeasures (40 CFR part 112) in addition to the requirements of this administrative regulation. Used oil processors or re-refiners are also subject to the Underground Storage Tank (401 KAR Chapter 42) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this administrative regulation.

(1) Management units. Used oil processors or re-refiners shall not store used oil in units other than tanks, containers, or units subject to regulation under 401 KAR Chapter 34 or 35.

(2) Condition of units. Containers and aboveground tanks used to store or process used oil at processing and re-refining facilities shall be:

(a) In good condition (no severe rusting, apparent structural defects or deterioration); and

(b) Not leaking (no visible leaks).

(3) Secondary containment for containers. Containers used to store or process used oil at processing and re-refining facilities shall be equipped with a secondary containment system.

(a) The secondary containment system shall consist of, at a minimum:

1. Dikes, berms or retaining walls; and

2. A floor. The floor shall cover the entire area within the dike, berm, or retaining wall; or

(b) An equivalent secondary containment system.

(c) The entire containment system, including walls and floor, shall be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(4) Secondary containment for existing aboveground tanks. Existing aboveground tanks used to store or process used oil at processing and re-refining facilities shall be equipped with a secondary containment system.

(a) The secondary containment system shall consist of, at a minimum:

1. Dikes, berms or retaining walls; and

2. A floor. The floor shall cover the entire area within the dike, berm, or retaining wall except areas where existing portions of the tank meet the ground; or

(b) An equivalent secondary containment system.

(c) The entire containment system, including walls and floor, shall be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(5) Secondary containment for new aboveground tanks. New aboveground tanks used to store or process used oil at processing and re-refining facilities shall be equipped with a secondary containment system.

(a) The secondary containment system shall consist of, at a minimum:

1. Dikes, berms or retaining walls; and

2. A floor. The floor shall cover the entire area within the dike, berm, or retaining wall; or

(b) An equivalent secondary containment system.

(c) The entire containment system, including walls and floor, shall be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(6) Labels.

(a) Containers and aboveground tanks used to store or process used oil at processing and re-refining facilities shall be labeled or marked clearly with the words "Used Oil."

(b) Fill pipes used to transfer used oil into underground storage tanks at processing and re-refining facilities shall be labeled or marked clearly with the words "Used Oil."

(7) Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements 401 KAR 42:060 that has occurred after the effective date of the authorized used oil program for the state in which the release is located, an owner or operator shall perform the following cleanup steps:

(a) Stop the release;

(b) Contain the released used oil;

(c) Clean up and manage properly the released used oil and other materials; and

(d) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service;

(e) Notify the cabinet if required by KRS 224.01-400(11) and (12); and

(f) Perform corrective action in compliance with KRS 224.01-405.

(8) Closure.

(a) Aboveground tanks. Owners and operators who store or process used oil in aboveground tanks shall comply with the following requirements:

1. At closure of a tank system, the owner or operator shall remove or decontaminate used oil residues in tanks, contaminated containment system components, contaminated soils, and structures and equipment contaminated with used oil, and manage them as hazardous waste, unless the materials are not hazardous waste.

2. If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in subparagraph 1 of this paragraph, then the owner or operator shall close the tank system and perform post-closure care in accordance

with the closure and post-closure care requirements that apply to hazardous waste landfills (Section 4 of 401 KAR 35:230).

(b) Containers. Owners and operators who store used oil in containers shall comply with the following requirements:

1. At closure, containers holding used oils or residues of used oil shall be removed from the site;

2. The owner or operator shall remove or decontaminate used oil residues, contaminated containment system components, contaminated soils, and structures and equipment contaminated with used oil, and manage them as hazardous waste, unless the materials are not hazardous waste under 401 KAR Chapter 31.

Section 6. Analysis Plan. Owners or operators of used oil processing and re-refining facilities shall develop and follow a written analysis plan describing the procedures that will be used to comply with the analysis requirements of Section 4 of this administrative regulation and, if applicable, Section 3 of 401 KAR 44:070. The owner or operator shall keep the plan at the facility.

(1) Rebuttable presumption for used oil in Section 4 of this administrative regulation. At minimum, the plan shall specify the following:

(a) Whether sample analyses or knowledge of the halogen content of the used oil will be used to make this determination.

(b) If sample analyses are used to make this determination:

1. The sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using either:

a. One (1) of the sampling methods in 401 KAR 31:100; or

b. A method shown to be equivalent under Sections 1 and 6 of 401 KAR 31:060;

2. The frequency of sampling to be performed, and whether the analysis will be performed on-site or off-site; and

3. The methods used to analyze used oil for the parameters specified in Section 4 of this administrative regulation.

(c) If sample analyses are not used, the type of information that will be used to determine the halogen content of the used oil.

(2) On-specification used oil fuel in Section 3 of 401 KAR 44:070. At a minimum, the plan shall specify the following if Section 3 of 401 KAR 44:070 is applicable:

(a) Whether sample analyses or other information will be used to make this determination.

(b) If sample analyses are used to make this determination:

1. The sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using either:

a. One (1) of the sampling methods in 401 KAR 31:100; or

b. A method shown to be equivalent under Sections 1 and 6 of 401 KAR 31:060;

2. Whether used oil will be sampled and analyzed prior to or after any processing or re-refining;

3. The frequency of sampling to be performed, and whether the analysis will be performed on-site or off-site; and

4. The methods used to analyze used oil for the parameters specified in Section 3 of 401 KAR 44:070.

(c) If sample analyses are not used, the type of information that will be used to make the on-specification used oil fuel determination.

Section 7. Tracking. (1) Acceptance. Used oil processors or re-refiners shall keep a record of each used oil shipment accepted for processing or re-refining. These records may take the form of a log, invoice, manifest, bill of lading or other shipping documents. Records for each shipment shall include the following information:

(a) The name and address of the transporter who delivered the used oil to the processor or re-refiner;

(b) The name and address of the generator or processor or re-refiner from whom the used oil was sent for processing or re-refining;

(c) The EPA identification number of the transporter who

delivered the used oil to the processor or re-refiner;

(d) The EPA identification number (if applicable) of the generator or processor or re-refiner from whom the used oil was sent for processing or re-refining;

(e) The quantity of used oil accepted; and

(f) The date of acceptance.

(2) Delivery. Used oil processor or re-refiners shall keep a record of each shipment of used oil that is shipped to a used oil burner, processor or re-refiner, or disposal facility. These records may take the form of a log, invoice, manifest, bill of lading or other shipping documents. Records for each shipment shall include the following information:

(a) The name and address of the transporter who delivers the used oil to the burner, processor or re-refiner or disposal facility;

(b) The name and address of the burner, processor or re-refiner or disposal facility who will receive the used oil;

(c) The EPA identification number of the transporter who delivers the used oil to the burner, processor or re-refiner or disposal facility;

(d) The EPA identification number of the burner, processor or re-refiner, or disposal facility who will receive the used oil;

(e) The quantity of used oil shipped; and

(f) The date of shipment.

(3) Record retention. The records described in subsections (1) and (2) of this section shall be maintained for at least two years.

Section 8. Operating Record and Reporting. (1) Operating record.

(a) The owner or operator shall keep a written operating record at the facility.

(b) The following information shall be recorded, as it becomes available, and maintained in the operating record until closure of the facility;

1. Records and results of used oil analyses performed as described in the analysis plan required under Section 6 of this administrative regulation; and

2. Summary reports and details of all incidents that require implementation of the contingency plan as specified in Section 3(2) of this administrative regulation.

(2) Reporting. A used oil processor or re-refiner shall report to the cabinet, in the form of a letter, on an annual basis (by March 1 of each year), the following information concerning used oil activities during the previous calendar year:

(a) The EPA identification number, name, and address of the processor or re-refiner;

(b) The calendar year covered by the report; and

(c) The quantities of used oil accepted for processing or re-refining and the manner in which the used oil is processed or re-refined, including the specific processes employed.

Section 9. Off-site Shipments of Used Oil. Used oil processors or re-refiners who initiate shipments of used oil off-site shall ship the used oil using a used oil transporter who has obtained an EPA identification number.

Section 10. Management of Residues. Owners and operators who generate residues from the storage, processing, or re-refining of used oil shall manage the residues as specified in Section 1(5) OF 401 KAR 44:010.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale

has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed regulation affects used oil processors and refiners.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First Year: The existing staff of the agency will have an increased workload in order to process the newly regulated entities.

2. Continuing costs or savings: Once the new entities are processed, there will be no extra costs.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs.

b. Reporting and paperwork requirements: There are no additional paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants are to be used for the implementation and enforcement of this regulation.

6. To the extent available from the public comments received, the

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economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were not considered. These changes are consistent with federal standards.

8. Assessment of expected benefits of the administrative regulation: These amendments provide consistency with federal standards.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Implementation of this regulation will help protect human health and the environment.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Yes, there would be detrimental effects without the implementation of this regulation.

c. If detrimental effect would result, explain detrimental effect: Improper management of used oil could result in soil and groundwater contamination that would pose a threat to public health and the environment.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, policies, or regulations that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Tiering is applied to all of Kentucky's waste regulations, based on type and quantity of waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed regulation adopts changes that apply to used oil processors. This regulation is necessary to maintain consistency between state and federal programs. In addition, the regulation has been modified to reflect regulation construction specified in KRS 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that process or

refine used oil.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (New Administrative Regulation)

401 KAR 44:060. Standards for used oil burners who burn off-specification used oil for energy recovery.

RELATES TO: KRS 224.10, 224.40, 224.46, 224.50, 40 CFR Part 279 Subpart G

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510, 224.46-530, 224.50-545

NECESSITY AND FUNCTION: This chapter implements the provisions of KRS 224.46-530 and 224.50-545. This administrative regulation establishes standards for used oil burners who burn off-specification used oil for energy recovery.

Section1. Applicability. (1) General. The requirements of this administrative regulation apply to used oil burners except as specified in paragraphs (a) and (b) of this subsection. A used oil burner is a facility where used oil not meeting the specification requirements in Section 2 of 401 KAR 44:010 is burned for energy recovery in devices identified in Section 2(1) of this administrative regulation. Facilities burning used oil for energy recovery under the following conditions are not subject to this administrative regulation:

(a) The used oil is burned by the generator in an on-site space heater under the provisions of Section 4 of 401 KAR 44:020; or

(b) The used oil is burned by a processor or re-refiner for purposes of processing used oil, that is considered burning incidental to used oil processing.

(2) Other applicable provisions. Used oil burners who conduct the following activities are also subject to the requirements of other applicable provisions of this chapter as indicated below.

(a) Burners who generate used oil shall also comply with 401 KAR 44:020;

(b) Burners who transport used oil shall also comply with 401 KAR 44:040;

(c) Except as provided in Section 2(2) of this administrative regulation, burners who process or re-refine used oil shall also comply with 401 KAR 44:050;

(d) Burners who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to

be burned for energy recovery meets the used oil fuel specifications set forth in Section 2 of 401 KAR 44:010 shall also comply with 401 KAR 44:070; and

(e) Burners who dispose of used oil shall comply with 401 KAR 44:080.

(3) Specification fuel. This administrative regulation does not apply to persons burning used oil that meets the used oil fuel specification of Section 2 of 401 KAR 44:010, provided that the burner complies with the requirements of 401 KAR 44:070.

Section 2. Restrictions on Burning. (1) Off-specification used oil fuel may be burned for energy recovery in only the following devices:

(a) Industrial furnaces identified in Section 3 of 401 KAR 44:010;

(b) Boilers, as defined in Section 3 of 401 KAR 44:010, that are identified as follows:

1. Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes;

2. Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale; or

3. Used oil-fired space heaters provided that the burner meets the provisions of Section 4 of 401 KAR 44:020; or

(c) Hazardous waste incinerators subject to regulation under 401 KAR 34:240 or 35:240.

(2)(a) With the following exception, used oil burners shall not process used oil unless they also comply with the requirements of 401 KAR 44:050.

(b) Used oil burners may aggregate off-specification used oil with virgin oil or on-specification used oil for purposes of burning, but shall not aggregate for purposes of producing on-specification used oil.

Section 3. Notification. (1) Identification numbers. Used oil burners that have not previously complied with the notification requirements of Section 2 of 401 KAR 34:020 or Section 2 of 401 KAR 35:020 shall comply with these requirements and obtain an EPA identification number.

(2) Mechanics of notification. A used oil burner who has not received an EPA identification number shall obtain one by notifying the cabinet's Hazardous Waste Branch of their used oil activity by submitting either:

(a) A completed DEP Form 7037, Notification of Hazardous Waste Activity; or

(b) A letter requesting an EPA identification number. The letter shall include the following information:

1. Burner company name;
2. Owner of the burner company;
3. Mailing address for the burner;
4. Name and telephone number for the burner point of contact;
5. Type of used oil activity; and
6. Location of the burner facility.

Section 4. Rebuttable Presumption for Used Oil. (1) To ensure that used oil managed at a used oil burner facility is not hazardous waste under the rebuttable presumption of Section 1(2)(a)2.b. of 401 KAR 44:010, a used oil burner shall determine whether the total halogen content of used oil managed at the facility is above or below 1,000 ppm.

(2) The used oil burner shall determine if the used oil contains above or below 1,000 ppm total halogens by:

(a) Testing the used oil;

(b) Applying knowledge of the halogen content of the used oil in light of the materials or processes used; or

(c) If the used oil has been received from a processor or refiner subject to regulation under 401 KAR 44:050, using information provided by the processor or re-refiner.

(3) If the used oil contains greater than or equal to 1,000 ppm

total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in 401 KAR 31:040. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from SW-846, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in 401 KAR 31:100).

(a) The rebuttable presumption does not apply to metalworking oils or fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in Section 5(3) of 401 KAR 44:020, to reclaim metalworking oils or fluids. The presumption does apply to metalworking oils or fluids if such oils or fluids are recycled in any other manner, or disposed.

(b) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(4) Record retention. Records of analyses conducted or information used to comply with subsections (1) through (3) of this section shall be maintained by the burner for at least two (2) years.

Section 5. Used Oil Storage. Used oil burners are subject to all applicable spill prevention, control and countermeasures (40 CFR part 112) in addition to the requirements of this administrative regulation. Used oil burners are also subject to the underground storage tank (401 KAR Chapter 42) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this administrative regulation.

(1) Storage units. Used oil burners shall not store used oil in units other than tanks, containers, or units subject to regulation under 401 KAR Chapter 34 or 35.

(2) Condition of units. Containers and aboveground tanks used to store oil at burner facilities shall be:

(a) In good condition (no severe rusting, apparent structural defects or deterioration); and

(b) Not leaking (no visible leaks).

(3) Secondary containment for containers. Containers used to store used oil at burner facilities shall be equipped with a secondary containment system.

(a) The secondary containment system shall consist of, at a minimum:

1. Dikes, berms or retaining walls; and

2. A floor. The floor shall cover the entire area within the dike, berm, or retaining wall.

(b) An equivalent secondary containment system.

(c) The entire containment system, including walls and floor, shall be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(4) Secondary containment for existing aboveground tanks. Existing aboveground tanks used to store used oil at burner facilities shall be equipped with a secondary containment system.

(a) The secondary containment system shall consist of, at a minimum:

1. Dikes, berms or retaining walls; and

2. A floor. The floor shall cover the entire area within the dike, berm, or retaining wall except areas where existing portions of the tank meet the ground; or

(b) An equivalent secondary containment system.

(c) The entire containment system, including walls and floor, shall be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(5) Secondary containment for existing aboveground tanks. New

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aboveground tanks used to store used oil at burner facilities shall be equipped with a secondary containment system.

(a) The secondary containment system shall consist of, at a minimum:

1. Dikes, berms or retaining walls; and
2. A floor. The floor shall cover the entire area within the dike, berm, or retaining wall; or

(b) An equivalent secondary containment system.

(c) The entire containment system, including walls and floor, shall be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(6) Labels.

(a) Containers and aboveground tanks used to store used oil at burner facilities shall be labeled or marked clearly with the words "Used Oil."

(b) Fill pipes used to transfer used oil into underground storage tanks at burner facilities shall be labeled or marked clearly with the words "Used Oil."

(7) Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements of 401 KAR 42:060 that has occurred after the effective date of this administrative regulation, a burner shall perform the following cleanup steps:

(a) Stop the release;

(b) Contain the released used oil;

(c) Clean up and manage properly the released used oil and other materials; and

(d) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service;

(e) Notify the cabinet if required by KRS 224.01-400(11) and (12); and

(f) Perform corrective action in compliance with KRS 224.01-405.

Section 6. Tracking. (1) Acceptance. Used oil burners shall keep a record of each used oil shipment accepted for burning. These records may take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Records for each shipment shall include the following information:

(a) The name and address of the transporter who delivered the used oil to the burner;

(b) The name and address of the generator or processor or re-refiner from whom the used oil was sent to the burner;

(c) The EPA identification number of the transporter who delivered the used oil to the burner;

(d) The EPA identification number (if applicable) of the generator or processor or re-refiner from whom the used oil was sent to the burner;

(e) The quantity of used oil accepted; and

(f) The date of acceptance.

(2) Record retention. The records described in subsection (1) of this section shall be maintained for at least two years.

Section 7. Notices. (1) Certification. Before a burner accepts the first shipment of off-specification used oil fuel from a generator, transporter, or processor or re-refiner, the burner shall provide to the generator, transporter, or processor or re-refiner a one-time written and signed notice certifying that:

(a) The burner has notified the cabinet stating the location and general description of his used oil management activities; and

(b) The burner will burn the used oil only in an industrial furnace or boiler identified in Section 2(1) of this administrative regulation.

(2) Certification retention. The certification described in subsection (1) of this section shall be maintained for two (2) years from the date the burner last receives shipment of off-specification used oil from that generator, transporter, or processor or re-refiner.

Section 8. Management of Residues. Burners who generate

residues from the storage or burning of used oil shall manage the residues as specified in Section 1(5) of 401 KAR 44:010.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed regulation affects owners and operators of off specification used oil burners that burn used oil for energy recovery.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First Year: The existing staff of the agency will have an

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increased workload in order to process the newly regulated entities.

2. Continuing costs or savings: Once the new entities are processed, there will be no extra costs.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs.

b. Reporting and paperwork requirements: There are no additional paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants are to be used for the implementation and enforcement of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were not considered. These changes are consistent with federal standards.

8. Assessment of expected benefits of the administrative regulation: These amendments provide consistency with federal standards.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Implementation of this regulation will help protect human health and the environment.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Yes, there would be detrimental effects without the implementation of this regulation.

c. If detrimental effect would result, explain detrimental effect: Improper management of used oil could result in soil and groundwater contamination that would pose a threat to public health and the environment.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, policies, or regulations that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Tiering is applied to all of Kentucky's waste regulations, based on type and quantity of waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed regulation adopts changes that apply to used oil burners. This regulation is necessary to maintain consistency between state and federal programs. In addition, the regulation has been modified to reflect regulation construction specified in KRS 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those

required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that burn off specification used oil for energy recovery.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (New Administrative Regulation)

401 KAR 44:070. Standards for used oil fuel marketers.

RELATES TO: KRS 224.10, 224.40, 224.46, 224.50, 40 CFR Part 279 Subpart H

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510, 224.46-530, 224.50-545

NECESSITY AND FUNCTION: This chapter implements the provisions of KRS 224.46-530 and 224.50-545. This administrative regulation establishes standards for used oil fuel marketers.

Section 1. Applicability. (1) Any person who conducts either of the following activities is subject to the requirements of this administrative regulation:

(a) Directs a shipment of off-specification used oil from its facility to a used oil burner; or

(b) First claims that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in Section 2 of 401 KAR 44:010.

(2) The following persons are not marketers subject to this administrative regulation:

(a) Used oil generators, and transporters who transport used oil received only from generators, unless the generator or transporter directs a shipment of off-specification used oil to a used oil burner. However, processors or re-refiners who burn some used oil fuel for

purposes of processing are considered to be burning incidental to processing. Thus, generators and transporters who direct shipments of off-specification used oil to processors or re-refiners who incidentally burn used oil are not marketers subject to this administrative regulation;

(b) Persons who direct shipments of on-specification used oil and who are not the first person to claim the oil meets the used oil fuel specifications of Section 2 of 401 KAR 44:010.

(3) Any person subject to the requirements of this administrative regulation shall also comply with one of the following:

(a) 401 KAR 44:020, Standards for used oil generators;

(b) 401 KAR 44:040, Standards for used oil transporters and transfer facilities;

(c) 401 KAR 44:050, Standards for used oil processors and re-refiners; or

(d) 401 KAR 44:060, Standards for used oil burners who burn off-specification used oil for energy recovery.

Section 2. Prohibitions. A used oil fuel marketer shall initiate a shipment of off-specification used oil only to a used oil burner who:

(1) Has an EPA identification number; and

(2) Burns the used oil in an industrial furnace or boiler identified in Section 2(1) of 401 KAR 44:060 or in a hazardous waste incinerator subject to 401 KAR Chapters 34 or 35.

Section 3. On-specification Used Oil Fuel. (1) Analysis of used oil fuel. A generator, transporter, processor or re-refiner, or burner may determine that used oil that is to be burned for energy recovery meets the fuel specifications of Section 2 of 401 KAR 44:010 by performing analyses or obtaining copies of analyses or other information documenting that the used oil fuel meets the specifications.

(2) Record retention. A generator, transporter, processor or re-refiner, or burner who first claims that used oil that is to be burned for energy recovery meets the specifications for used oil fuel under Section 2 of 401 KAR 44:010, shall keep copies of analyses of the used oil (or other information used to make the determination) for three years.

Section 4. Notification. (1) Identification numbers. A used oil fuel marketer subject to the requirements of this administrative regulation who has not previously complied with the notification requirements of Section 2 of 401 KAR 34:020 or Section 2 of 401 KAR 35:020 shall comply with these requirements and obtain an EPA identification number.

(2) A marketer who has not received an EPA identification number shall obtain one by notifying the cabinet's Hazardous Waste Branch of their used oil activity by submitting either:

(a) A completed DEP Form 7037, Notification of Hazardous Waste Activity; or

(b) A letter requesting an EPA identification number. The letter shall include the following information:

1. Marketer company name;
2. Owner of the marketer;
3. Mailing address for the marketer;
4. Name and telephone number for the marketer point of contact; and

5. Type of used oil activity (that is, generator directing shipments of off-specification used oil to a burner).

Section 5. Tracking. (1) Off-specification used oil delivery. Any used oil marketer who directs a shipment of off-specification used oil to a burner shall keep a record of each shipment of used oil to a used oil burner. These records may take the form of a log, invoice, manifest, bill of lading or other shipping documents. Records for each shipment shall include the following information:

(a) The name and address of the transporter who delivers the used oil to the burner;

(b) The name and address of the burner who will receive the used oil;

(c) The EPA identification number of the transporter who delivers the used oil to the burner;

(d) The EPA identification number of the burner;

(e) The quantity of used oil shipped; and

(f) The date of shipment.

(2) On-specification used oil delivery. A generator, transporter, processor or re-refiner, or burner who first claims that used oil that is to be burned for energy recovery meets the fuel specifications under Section 2 of 401 KAR 44:010 shall keep a record of each shipment of used oil to an on-specification used oil burner. Records for each shipment shall include the following information:

(a) The name and address of the facility receiving the shipment;

(b) The quantity of used oil fuel delivered;

(c) The date of shipment or delivery; and

(d) A cross-reference to the record of used oil analysis or other information used to make the determination that the oil meets the specification as required under Section 3(1) of this administrative regulation.

(3) Record retention. The records described in subsections (1) and (2) of this section shall be maintained for at least two (2) years.

Section 6. Notices. (1) Certification. Before a used oil generator, transporter, or processor or re-refiner directs the first shipment of off-specification used oil fuel to a burner, he shall obtain a one-time written and signed notice from the burner certifying that:

(a) The burner has notified the cabinet stating the location and general description of used oil management activities; and

(b) The burner will burn the off-specification used oil only in an industrial furnace or boiler identified in Section 2(1) of 401 KAR 44:060.

(2) Certification retention. The certification described in subsection (1) of this section shall be maintained for two years from the date the last shipment of off-specification used oil is shipped to the burner.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for

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reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed regulation affects used oil marketers.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First Year: The existing staff of the agency will have an increased workload in order to process the newly regulated entities.

2. Continuing costs or savings: Once the new entities are processed, there will be no extra costs.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs.

b. Reporting and paperwork requirements: There are no additional paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants are to be used for the implementation and enforcement of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were not considered. These changes are consistent with federal standards.

8. Assessment of expected benefits of the administrative regulation: These amendments provide consistency with federal standards.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Implementation of this regulation will help protect human health and the environment.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Yes, there would be detrimental effects without the implementation of this regulation.

c. If detrimental effect would result, explain detrimental effect: Improper management of used oil could result in soil and groundwater contamination that would pose a threat to public health and the environment.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, policies, or regulations that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Tiering is applied to all of Kentucky's waste regulations, based on type and quantity of waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed regulation adopts changes that apply to used oil marketers. This regulation is necessary to maintain consistency between state and federal programs. In addition, the regulation has been modified to reflect regulation construction specified in KRS 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that market used oil.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

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**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(New Administrative Regulation)**

401 KAR 44:080. Standards for use as a dust suppressant and disposal of used oil.

RELATES TO: KRS 224.10, 224.40, 224.46, 224.50, 40 CFR Part 279 Subpart I

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510, 224.46-530, 224.50-545

NECESSITY AND FUNCTION: This chapter implements the provisions of KRS 224.46-530 and 224.50-545. This administrative regulation establishes for the disposal of used oil and prohibits the use of used oil as a dust suppressant.

Section 1. Applicability. The requirements of this administrative regulation apply to all used oils that cannot be recycled and are therefore being disposed.

Section 2. Disposal. (1) Disposal of hazardous used oils. Used oils that are identified as a hazardous waste and cannot be recycled in accordance with this chapter shall be managed in accordance with the hazardous waste management requirements of 401 KAR Chapters 31 through 39.

(2) Disposal of nonhazardous used oils. Used oils that are not hazardous wastes and cannot be recycled under this chapter shall be disposed in accordance with the requirements of 401 KAR Chapters 47 and 48.

Section 3. Use as a Dust Suppressant. The use of used oil as a dust suppressant is prohibited.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a

interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed regulation affects managers of used oil.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First Year: The existing staff of the agency will have an increased workload in order to process the newly regulated entities.

2. Continuing costs or savings: Once the new entities are processed, there will be no extra costs.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs.

b. Reporting and paperwork requirements: There are no additional paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants are to be used for the implementation and enforcement of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were not considered. These changes are consistent with federal standards.

8. Assessment of expected benefits of the administrative regulation: These amendments provide consistency with federal standards.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Implementation of this regulation will help protect human health and the environment.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Yes, there would be detrimental effects without the implementation of this regulation.

c. If detrimental effect would result, explain detrimental effect: Improper management of used oil could result in soil and groundwater contamination that would pose a threat to public health and the environment.

10. Identify any statute, administrative regulation, or government

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policy which may be in conflict, overlapping, or duplication: There are no statutes, policies, or regulations that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Tiering is applied to all of Kentucky's waste regulations, based on type and quantity of waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed regulation adopts changes that apply to used oil that cannot be recycled. This regulation is necessary to maintain consistency between state and federal programs. In addition, the regulation has been modified to reflect regulation construction specified in KRS 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that manage used oil.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (New Administrative Regulation)

401 KAR 47:005. Definitions related to 401 KAR Chapter 47.

RELATES TO: KRS 224.10, 224.40, 224.43, 40 CFR 257.2, 258.2, and 401 KAR Chapter 47

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt administrative regulations for the management, processing, and disposal of solid wastes. This chapter establishes standards applicable to all solid wastes or facilities. This administrative regulation defines essential terms that are used in this chapter.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or otherwise specifically indicated by context, terms in 401 KAR Chapter 47 shall have the meanings given in this Section.

(1) "100-year floodplain" means any land area which is subject to a one (1) percent or greater chance of flooding in any given year from any source.

(2) "100-year flood" means a flood that has a one (1) percent chance of being equaled or exceeded in any given year.

(3) "Aboveground tank" means a device meeting the definition of "tank" and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

(4) "Active fault" means a land area which, according to the weight of geological evidence, has a reasonable probability of being affected by movement along a fault to the extent that a waste site or facility would be damaged and thereby pose a threat to human health and the environment.

(5) "Active life" of a facility means the period from the initial receipt of waste at a waste site or facility until the cabinet receives certification of final closure.

(6) "Active portion" means any area of a facility where treatment, storage, or disposal operations are being or have been conducted and which have not been closed. It includes the treated area of a landfarm and the active face of a landfill. Covered, closed, or inactive portions of landfills, building roofs, and roads are excluded unless designated as "active portions" by the cabinet.

(7) "Administrative application" means the standard forms and format used for applying for a solid waste site or facility permit as specified in 401 KAR 47:160 and 401 KAR 47:180.

(8) "Admixed liner" means a liner made from a mixture of any of a multitude of materials, often asphalt or cement, with widely varying physical and chemical properties. Admixed liners shall be demonstrated to be structurally sound and chemically resistant to the waste placed in it so as to be capable of supporting the waste without cracking or disintegrating or allowing waste or leachate to escape.

(9) "Agricultural waste" means any nonhazardous waste resulting from the production and processing of on-the-farm agricultural products, including manures, prunings and crop residues.

(10) "Airport" means public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

(11) "Application" means the form approved by the cabinet for applying for a permit, including any additions, revisions or modifications and any narrative and drawings required by 401 KAR Chapters 47 or 48.

(12) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(13) "Attenuation" means any decrease in the maximum concen-

tration or total quantity of an applied chemical or biological constituent in a fixed time or distance traveled resulting from a physical, chemical, or biological reaction or transformation occurring in the zone of aeration or zone of saturation.

(14) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit or part of a facility, such as the plant manager, superintendent, or person of equivalent responsibility.

(15) "Base flood" means a flood that has a one (1) percent or greater chance of recurring in any year, or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

(16) "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

(17) "Bird hazard" means an increase in the likelihood of bird or aircraft collisions that may cause damage to the aircraft or injury to its occupants.

(18) "Cabinet" shall have the meaning specified in KRS 224.01-010.

(19) "Cation exchange capacity" means the sum of exchangeable cations a soil can absorb expressed in milliequivalents per 100 grams of soil as determined by sampling the soil to the depth of cultivation or solid waste placement, whichever is greater, and analyzing by the summation method for distinctly acid soils or the sodium acetate method for neutral, calcareous, or saline soils.

(20) "Cell" means a portion of any landfill which is isolated, usually by means of an approved barrier.

(21) "Certification" means a statement of professional opinion based upon knowledge and belief.

(22) "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements.

(23) "Closed unit" means any solid waste unit that no longer receives waste as of May 8, 1990 and has received all required final layers of cover material.

(24) "Closure care" means the routine care, maintenance, monitoring, and any required corrective action of a solid waste disposal site or facility following certification of closure until the applicable requirements are met.

(25) "Closure" shall have the meaning specified in KRS 224.01-010.

(26) "Coal mining solid waste" means solid waste, as defined by KRS 224.01-010, that is generated at, and is incidental to, a coal exploration operation or surface mining and reclamation operation regulated under KRS Chapter 350, and shall not include wastes generated by households, communities, cities, counties, or any person or business other than those regulated under KRS Chapter 350.

(27) "Coal mining waste" means earth materials which are combustible, physically unstable, or acid-forming or toxic-forming, that are generated during and incidental to the mining and extraction of coal and to the washing and crushing of coal. The term does not include used oil, paints or flammable liquids. The term includes the following:

(a) Refuse which is that waste material in the raw coal which it is the object of cleaning to remove;

(b) Overburden which includes all of the earth and other geologic materials, excluding topsoil, which lie above a natural deposit of coal and also means such earth and other material after removal from their natural state in the process of mining; and

(c) Coal mining by-products which include any material that is not

one (1) of the primary products of a particular coal mining operation, is a secondary and incidental product of the particular operation and would not be solely and separately mined by the particular operation. The term does not include an intermediate mining product which results from one (1) of the steps in a mining process and is processed through the next step of the process within a short time. An example of a coal mining by-product is that part of the ore deposit that is too low in grade to be of economic value at the time, but which is stored separately in the hope that it can be profitably treated later.

(28) "Collection box" shall have the meaning specified in KRS 224.01-010.

(29) "Commercial solid waste" shall have the meaning specified in KRS 224.01-010.

(30) "Component" means either the tank or ancillary equipment of a tank system.

(31) "Compost" shall have the meaning specified in KRS 224.01-010.

(32) "Composting" shall have the meaning specified in KRS 224.01-010.

(33) "Conditionally exempt small quantity generator" means:

(a) A generator who generates no more than 100 kilograms of hazardous waste in a calendar month; and

(b) A generator who generates acutely hazardous waste listed in Sections 2, 3, and 4(5) of 401 KAR 31:040 in a calendar month in quantities greater than one (1) kilogram. All quantities of that acutely hazardous waste are subject to administrative regulation under 401 KAR Chapters 32 through 39, and the notification and permitting requirements of KRS 224.01-400, 224.40-310, 224.46-510, 224.46-580, and 224.50-130 to 224.50-413.

(34) "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(35) "Construction/demolition debris landfill" means a solid waste site or facility for the disposal of construction/demolition waste. The technical requirements for construction/demolition debris landfills are found in 401 KAR 47:080, 401 KAR 48:050, and 401 KAR 48:060.

(36) "Construction/demolition waste" means waste resulting from the construction, remodeling, repair, and demolition of structures and roads, and for the disposal of uncontaminated solid waste consisting of vegetation resulting from land clearing and grubbing, utility line maintenance, and seasonal and storm related cleanup.

(37) "Construction materials" means nonhazardous nonsoluble material, including but not limited to steel, concrete, brick, asphalt roofing material, or lumber from a construction or demolition project. Mixture of construction and demolition debris with any amount of other types of waste may cause it to be classified as other than construction materials.

(38) "Contained landfill" means a solid waste site or facility that accepts solid waste for disposal. The technical requirements for contained landfills are found in 401 KAR 47:080, 401 KAR 48:050, and 401 KAR 48:070 to 401 KAR 48:090.

(39) "Contaminate" means introduce a substance that would cause:

(a) The concentration of that substance in the groundwater to exceed the maximum contaminant level specified in 401 KAR 30:031, Sections 5 and 6 of 401 KAR 47:030, or Section 8 of 401 KAR 34:060;

(b) An increase in the concentration of that substance in the groundwater where the existing concentration of that substance exceeds the maximum contaminant level specified in 401 KAR 30:031, 401 KAR 47:030, or Section 8 of 401 KAR 34:060; or

(c) A significant increase above established background levels, for substances that do not have an established maximum contamination level.

(40) "Contamination" means the degradation of naturally occurring water, air, or soil quality either directly or indirectly as a result of

human activities.

(41) "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in the event of a fire, explosion, or release of waste or waste constituents into the environment which has the potential for endangering human health and the environment. Financial planning to identify resources for initiation of such action is a part of contingency plan development.

(42) "Convenience center" shall have the meaning specified in KRS 224.01-010.

(43) "Cover material" means soil or other suitable material that is spread and compacted on the top and side slopes of disposed waste in order to control disease vectors, gases, erosion, fires, and infiltration of precipitation or run-on; support vegetation; provide trafficability; or assure an aesthetic appearance.

(44) "Demonstration" shall have the meaning specified in KRS 224.01-010.

(45) "Destruction or adverse modification" means an alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

(46) "Dike" means an embankment or ridge of either natural or manmade materials used to prevent the movement of liquids, sludges, solids, or other materials.

(47) "Disease vector" means all insects, birds or gnawing animals such as rats, mice or ground squirrels, which are capable of transmitting pathogens.

(48) "Disposal facility" means a facility or part of a facility at which solid waste is intentionally placed into or on any land or water and at which waste will remain after closure.

(49) "Disposal" shall have the meaning specified in KRS 224.01-010.

(50) "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(51) "Draft permit" shall have the same meaning as "proposed permit".

(52) "Effluent limitations" shall have the same meaning as KRS 224.01-010.

(53) "Emergency permit" means a permit issued by the cabinet to temporarily store, treat or dispose of hazardous waste in accordance with the provisions of Section 2 of 401 KAR 38:060, to temporarily manage, process, or dispose of a solid waste in accordance with the provisions of Section 2 of 401 KAR 47:150 or to temporarily store, treat, or dispose of special waste in accordance with the provisions of Section 1 of 401 KAR 45:135.

(54) "Endangered or threatened species" means any species listed as such pursuant to Section 4 of the Endangered Species Act, as amended, 16 USC 1536.

(55) "Engineer" shall have the meaning specified in KRS 322.010. An independent, professional engineer shall be registered in Kentucky pursuant to KRS 322.040 and shall be qualified to engage in waste management engineering practices.

(56) "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice and which has a channel bottom that is always above the local water table.

(57) "Equivalent method" means any testing or analytical method, approved jointly by the administrator and the secretary under 401 KAR Chapter 31, or methods in 401 KAR Chapters 47 and 48, approved by the secretary of the cabinet.

(58) "Existing unit" means any solid waste disposal unit that was receiving solid waste as of May 8, 1990 and has not received the final layers of cover material.

(59) "Explosive gas" means methane (CH₄).

(60) "Facility structures" means any buildings and sheds or utility or drainage lines on the solid waste site or facility.

(61) "Facility" means all contiguous land, and structures, other

appurtenances, and improvements on the land, used for treating, storing, or disposing of waste. A facility may consist of several treatment, storage, or disposal operational units, such as one (1) or more landfills, surface impoundments, or combination of them.

(62) "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation, and the United States Government Printing Office.

(63) "Final closure" of a solid waste site or facility means the approved closure of a solid waste site or facility in accordance with 401 KAR 30:031, 401 KAR 47:030 and the applicable requirements of 401 KAR 48:060, 401 KAR 48:090, 401 KAR 48:170, or 401 KAR 48:200.

(64) "Flood plain" means areas adjoining inland waters which are inundated by the base flood, unless otherwise specified in 401 KAR 30:031 or 401 KAR 47:030, and includes: 100-year floodplain and floodway.

(65) "Floodway" means the channel of the waterway, stream or river and that portion of the adjoining floodplain which provides for passage of the 100-year flood flow without increasing the floodwater depth across the 100-year floodplain by more than one (1) foot.

(66) "Food chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(67) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(68) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.

(69) "Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.

(70) "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table, and perched water zones below the B-soil horizon, including water circulating through fractures, bedding planes, and solution conduits.

(71) "Holocene" means the most recent epoch of the quaternary period, extending from the end of the pleistocene to the present.

(72) "Household solid waste" shall have the meaning specified in KRS 224.01-010.

(73) "Hydric soils" means soils that, in their undrained condition, are saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

(74) "Hydrophytic vegetation" means a plant growing either in water, or in a substrate that is at least periodically deficient of oxygen during a growing season as a result of excessive water content.

(75) "Incinerator" means any enclosed device using controlled flame combustion for burning solid waste.

(76) "Industrial solid waste" shall have the meaning specified in KRS 224.01-010.

(77) "Inert landfill" means a facility for the proper disposal of inert, nonsoluble and nonputrescible solid waste, including construction materials, certain industrial or special wastes, and other waste material with specific approval from the cabinet. Certain putrescible wood product wastes (such as cardboard, paper, sawdust, wood chips, and tree trimmings) may be considered by the cabinet for disposal at inert landfills.

(78) "Infectious waste" means those wastes which may cause disease or reasonably be suspected of harboring pathogenic organisms; included are wastes resulting from the operation of medical clinics, hospitals, and other facilities producing wastes which may consist of, but are not limited to, diseased human and animal parts, contaminated bandages, pathological specimens, hypodermic needles, contaminated clothing, and surgical gloves.

(79) "Inground tank" means a device meeting the definition of "tank" in this section and that whereby a portion of the tank is situated

to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(80) "Intermittent stream" means a stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year.

(81) "Karst terrain" means a type of topography where limestone, dolomite or gypsum is present and is characterized by naturally occurring closed topographic depressions or sinkholes, caves, disrupted surface drainage, and well developed underground solution channels formed by dissolution of these rocks by water moving underground.

(82) "Key personnel" shall have the meaning specified in KRS 224.01-010.

(83) "Landfarming facility" means a facility for land application of sludges or other solid waste by any method for purposes of disposal. It can be on any piece or pieces of land and may improve the physical and chemical qualities of the land for agricultural purposes, but does not alter the topography of the application area as revealed by contours and will not disturb the soil below three (3) feet from the surface.

(84) "Landfill" means a solid waste site or facility for the disposal of specific wastes that is located, designated, constructed, operated, maintained, and closed in conformance with 401 KAR Chapter 47 and 48, and 401 KAR 30:031, and receives a case-by-case design review by the cabinet.

(85) "Lateral expansion" means a horizontal expansion of the waste boundaries of an existing solid waste landfill unit.

(86) "Leachate" means any liquid including any suspended components in the liquid, that has percolated through or drained from waste.

(87) "Liner" means a continuous layer of natural or manmade material, beneath or on the sides of a waste site or facility, including but not limited to a waste pile, surface impoundment, landfill, or landfill cell, or beneath or on the sides of a waste site or facility which restricts the movement of the wastes, waste constituents, or leachate.

(88) "Lower explosive limit" means the lowest percent by volume of a mixture of explosive gases which will propagate a flame in air at twenty-five (25) degrees Celsius and atmospheric pressure.

(89) "Major modification" means for solid waste sites and facilities, a change meeting the criteria in Section 3 of 401 KAR 47:130.

(90) "Management facility" means a facility or part of a facility at which solid waste is held for a temporary period, at the end of which solid waste is processed, disposed or managed elsewhere.

(91) "Materials recovery facility" shall have the meaning specified in KRS 224.01-010.

(92) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

(93) "Miscellaneous unit" means a solid waste management unit where waste is disposed and that is not a container, tank, surface impoundment, pile, landfarming unit, landfill, incinerator, underground injection well with appropriate technical standards under 40 CFR Part 146, or unit eligible for a research, development, and demonstration permit under section 3 of 401 KAR 47:150.

(94) "Monitoring well" means a well used to obtain water samples for water quality and quantity analysis and groundwater levels.

(95) "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.

(96) "Municipal solid waste disposal facility" shall have the meaning specified in KRS 224.01-010.

(97) "Municipal solid waste reduction" shall have the meaning specified in KRS 224.01-010.

(98) "Municipal solid waste" shall have the meaning specified in KRS 224.01-010.

(99) "Newsprint" shall have the meaning specified in KRS 224.01-

010.

(100) "Notice of intent" means the standard forms for applying for a solid waste site or facility permit as required by 401 KAR 47:160, 401 KAR 47:170 and 401 KAR 48:200.

(101) "Off-site" means properties noncontiguous to the site.

(102) "On-site" means on the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing, as opposed to going along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access is also considered on-site property.

(103) "Open burning" means the combustion of any material or solid waste without:

(a) Control of combustion air to maintain adequate temperature for efficient combustion;

(b) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(c) Control of emission of the gaseous combustion products.

(104) "Open dump" shall have the meaning specified in KRS 224.01-010.

(105) "Onground tank" means a device meeting the definition of "tank" in this section and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external bottom of the tank cannot be visually inspected.

(106) "Operational plan" means the approved plan of operations filed with the cabinet which describes the method of operation that the permittee will use in the treatment, storage, or disposal of wastes.

(107) "Operator" means any person responsible for overall operation of an on-site or off-site waste facility, including any private contractor conducting operational activities at a federal facility.

(108) "Owner" means any person who owns an on-site or off-site waste facility, or any part of a facility.

(109) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface run-off. The term does not include "intermittent stream" or "ephemeral stream".

(110) "Periodic application of cover material" means the application and compaction of soil or other suitable material over disposed waste at a solid waste site or facility at the end of each operating day or at such frequencies and in such a manner as to reduce the risks of fire and to impede disease vector's access to the waste.

(111) "Permit by rule" means authorization allowing certain classes of sites or facilities to manage waste consistent with 401 KAR Chapters 30 to 49, without submission of a registration or permit application to the cabinet. Examples of solid waste sites or facilities which are permitted by rule include facilities identified in 401 KAR 47:150.

(112) "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management administrative regulations. The term permit includes permit-by-rule, registered permit-by-rule, research, development, and demonstration permit, and emergency permit. However, the term permit does not include draft permit or proposed permit.

(113) "Permittee" means any person holding a valid permit issued by the cabinet to manage, treat, store, or dispose of waste.

(114) "Person" shall have the meaning specified in KRS 224.01-010.

(115) "Personnel" or "facility personnel" means all persons who work at or oversee the operations of a waste facility, and whose actions or failure to act may result in noncompliance with the requirements of the waste management administrative regulations.

(116) "Pile" or "waste pile" means any noncontainerized accumulation of nonflowing solid waste that is used for processing or

management.

(117) "Point of compliance" means for solid waste site and facilities, groundwater monitoring wells located within 250 feet of the waste boundary as approved by the cabinet.

(118) "Point source" means any discernible, confined, and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(119) "Pollutant" shall have the same meaning as KRS 224.01-010.

(120) "Polychlorinated biphenyls" or "PCB" means halogenated organic compounds defined in accordance with 40 CFR 761.2 as of July 1989.

(121) "Postclosure" shall have the same meaning as "closure care."

(122) "Postclosure care" means the manner in which a facility shall be maintained when it no longer accepts waste for disposal.

(123) "Postclosure monitoring and maintenance" shall have the meaning specified in KRS 224.01-010.

(124) "Postconsumer waste paper" shall have the meaning specified in KRS 224.01-010.

(125) "Processing facility" means a facility or part of a facility using any method, technique or procedure, including neutralization, designed to change the physical, chemical, or biological character or composition of any solid waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for handling or reduced in volume.

(126) "Proposed permit" means a document prepared by the cabinet indicating the cabinet's tentative decision to issue or deny, modify, revoke or terminate a permit.

(127) "Publicly owned treatment works" or "POTW" shall have the meaning specified in KRS 224.01-010.

(128) "Publisher" shall have the meaning specified in KRS 224.01-010.

(129) "Putrescible" means susceptible to rapid decomposition by bacteria, fungi, or oxidation sufficient to cause nuisances such as odors, gases, or other offensive conditions.

(130) "Qualified groundwater scientist" means a geologist registered in Kentucky who has received a baccalaureate or postgraduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields to enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

(131) "Recharge zone" means an area supplying the water which enters an underground drinking water source.

(132) "Recovered material processing facility" shall have the meaning specified in KRS 224.01-010.

(133) "Recovered material" shall have the meaning specified in KRS 224.01-010.

(134) "Recycled content" shall have the meaning specified in KRS 224.01-010.

(135) "Recycling center" means a facility or a part of a facility at which solid waste is received and managed in a manner amenable for the recovery of material or energy. This term does not include recycling facilities.

(136) "Recycling facility" means a facility or a part of a facility at which solid waste is processed to reclaim material or energy from the solid waste.

(137) "Recycling" shall have the meaning specified in KRS 224.01-010.

(138) "Refuse-derived fuel" shall have the meaning specified in KRS 224.01-010.

(139) "Registered permit by rule" means that certain classes of

solid waste sites or facilities as specified in 401 KAR 47:080 have a permit as provided in 401 KAR 47:110 or 401 KAR 48:200.

(140) "Representative sample" means a sample of a universe or whole (for example, waste pile, lagoon, or groundwater) which can be expected to exhibit the average properties of the universe or whole.

(141) "Research, development, and demonstration permit" means a solid waste treatment or disposal facility using innovative and experimental technology as specified in sections of 401 KAR 47:150.

(142) "Residential landfill" means a facility for the proper disposal of solid waste including residential waste, commercial waste, institutional waste, and those sludges, industrial or special waste with specific approval from the cabinet.

(143) "Residual landfill" means a facility for the disposal of specific solid waste(s), including special waste, which is located, designed, constructed, operated, maintained, and closed in conformance with 401 KAR 30:031 and 401 KAR 47:030 and which receives a case-by-case design review by the cabinet.

(144) "Resource recovery" means the recovery of material or energy from waste.

(145) "Run-off" means any rainwater, leachate, or other liquid that drains overland from any part of a facility.

(146) "Run-on" means any rainwater, leachate, or other liquid that drains overland onto any part of a facility.

(147) "Salvaging" means the controlled removal of waste materials for utilization in a manner approved by the cabinet.

(148) "Sanitary landfill" means a facility for the disposal of solid waste that complies with 401 KAR 30:031 and 401 KAR 47:030.

(149) "Saturated zone" shall have the same meaning as "zone of saturation".

(150) "Scavenging" means the removal of waste materials from a waste management site or facility in a manner deemed by the cabinet to be dangerous to the health and safety of any person.

(151) "Schedule of compliance" means a schedule of remedial measures included in a permit or cabinet order, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with KRS Chapter 224 and 401 KAR Chapters 30 to 49.

(152) "Secretary" shall have the meaning specified in KRS 224.01-010.

(153) "Sewage system" shall have the meaning specified in KRS 224.01-010.

(154) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the waste facility or activity.

(155) "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 BTU per pound of sludge treated on a wet-weight basis.

(156) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.

(157) "Small quantity generator" means a generator who generates more than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month.

(158) "Solid waste" shall have the same meaning as KRS 224.01-010.

(159) "Solid waste management area" or "area" shall have the meaning specified in KRS 224.01-010.

(160) "Solid waste management facility" shall have the meaning specified in KRS 224.01-010.

(161) "Solid waste management" shall have the meaning specified in KRS 224.01-010.

(162) "Solid waste site or facility" means any place at which solid waste is managed, processed or disposed by landfilling, incineration, landfarming or any other method. The term includes: construc-

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tion/demolition debris landfill; collection box; contained landfill; convenience center; disposal facility; incinerator; injection well; landfarming facility; management facility; miscellaneous unit; municipal solid waste disposal facility; pile or waste pile; processing facility; recycling center; recycling facility; residual landfill; sanitary landfill; surface impoundment; tank; transfer facility; unit or solid waste unit; wastewater treatment unit; inert landfill; or residential landfill.

(163) "Solid waste unit" means a contiguous area of land on or in which solid waste is placed, or the largest area in which there is significant likelihood of mixing waste constituents in the same area. Examples of solid waste units include a surface impoundment, a waste pile, a land processing area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system, and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

(164) "State" means any of the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands or Guam but does not include any foreign country.

(165) "Storage" shall have the meaning specified in KRS 224.01-010.

(166) "Surface impoundment" means a facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(167) "Tank" means a stationary device designed to contain an accumulation of leachate or solid waste waste that is constructed primarily of nonearthen materials (for example, wood, concrete, steel, or plastic) which provide structural support.

(168) "Tank system" means a solid waste tank and its associated piping, ancillary equipment and containment system.

(169) "Technical application" means the standard format for applying for a solid waste site or facility permit as specified in 401 KAR 47:160 and 401 KAR 47:190.

(170) "Termination" shall have the meaning specified in KRS 224.01-010.

(171) "Transfer facility" shall have the meaning specified in KRS 224.01-010.

(172) "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body is a separate transport vehicle.

(173) "Transportation" shall have the meaning specified in KRS 224.01-010.

(174) "Trenching or burial operation" means the placement of sewage sludge or septic tank pumpings in a trench or other natural or manmade depression and the covering with soil or other suitable material at the end of each operating day such that the waste does not migrate to the surface.

(175) "Underground drinking water source" means:

(a) An aquifer supplying drinking water for human consumption; or

(b) An aquifer in which the groundwater contains less than 10,000 mg/l total dissolved solids.

(176) "Underground tank" means a device meeting the definition of "tank" in this section whose entire surface area is totally below the surface of and covered by the ground.

(177) "Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of managing or processing solid waste without posing a threat of release of waste to the environment.

(178) "Unit" shall have the same meaning as "solid waste unit".

(179) "Universal collection" shall have the meaning specified in KRS 224.01-010.

(180) "Unsaturated zone" shall have the same meaning as "Zone of aeration".

(181) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(182) "Vessel" means any watercraft used or capable of being used as a means of transportation on the water.

(183) "Washout" means the carrying away of waste by waters as a result of flooding.

(184) "Waste boundary" means:

(a) The outermost perimeter of the waste (projected in the horizontal plane) as it would exist at completion of the disposal activity; or

(b) An alternative boundary for a solid or special waste disposal facility which may be used in lieu of paragraph (a) when the cabinet finds that such a change would not result in the contamination of groundwater which may be needed or used for human consumption. Such a finding shall be based on an analysis and consideration of all the factors identified in the following subparagraphs of this paragraph that are relevant:

1. The hydrogeological characteristics of the facility and surrounding land including any natural attenuation and dilution characteristics of the aquifer;

2. The volume and physical and chemical characteristics of the leachate;

3. The quantity, quality, and direction of flow of groundwater underlying the facility;

4. The proximity and withdrawal rates of groundwater users;

5. The availability of alternative drinking water supplies;

6. The existing quality of the groundwater, including other sources of contamination and their cumulative impacts on the groundwater; and

7. Public health, safety, and welfare effects.

(185) "Waste disposal facility" shall have the same meaning as KRS 224.40-310.

(186) "Waste management district" shall have the meaning specified in KRS 224.01-010.

(187) "Waste pile" shall have the same meaning as "pile".

(188) "Waste site or facility" shall have the meaning specified in KRS 224.01-010.

(189) "Waste" shall have the meaning specified in KRS 224.01-010.

(190) "Wastewater treatment unit" means a tank which is part of a wastewater treatment facility which is subject to administrative regulation under either Section 402 or Section 307(b) of the Clean Water Act of 1972 and which receives, treats, stores, generates, or accumulates influent wastewater or receives, manages, processes, generates or accumulates wastewater treatment sludge, either of which is a solid waste.

(191) "Water pollution" shall have the meaning specified in KRS 224.01-010.

(192) "Water" or "waters of the Commonwealth" shall have the meaning specified in KRS 224.01-010.

(193) "Well" means any shaft or pit dug or bored into the earth, generally of cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(194) "Wetlands" means land that has a predominance of hydric soils and is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(195) "Zone of aeration" means that region of the soil or rock between the land surface and the nearest saturated zone in which the interstices are occupied partially by air.

(196) "Zone of incorporation" means the depth to which the soil on a landfarm is plowed, tilled, or otherwise designed to receive

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waste.

(197) "Zone of saturation" means that part of the earth's crust containing groundwater in which all voids, large and small, are filled with liquid.

Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by context, acronyms and abbreviations used in 401 KAR Chapter 47 shall have the meaning as identified in Table 1 of this administrative regulation.

Table 1. Acronyms and Abbreviations.

ASTM	American Society for Testing Materials
CFR	Code of Federal Regulations
CWA	Clean Water Act, as amended
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980
DEP	Kentucky Department for Environmental Protection
EPA	United States Environmental Protection Agency
KAR	Kentucky Administrative Regulation
kg	Kilogram
KPDES	Kentucky Pollution Discharge Elimination System
KRS	Kentucky Revised Statute
l	Liter
MCL	Maximum Contaminant Level
mg	milligram
NPDES	National Pollutant and Discharge Elimination System
OSHA	U.S. Occupational Safety and Health Administration
PCB	Polychlorinated biphenyl
POTW	Publicly owned treatment works
PSD	Prevention of significant deterioration
SCS	Soil Conservation Service
U.S. EPA	United States Environmental Protection Agency
USDA	United States Department of Agriculture

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the cabinet will provide reasonable accommodation, including auxiliary aids and

services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221.

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: This regulation does not affect any entities, because it only defines terms used in the chapter. The regulation was promulgated to comply with KRS 13A.222.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First Year: The cabinet will experience no additional costs or savings by promulgating the amendments to this regulation.

2. Continuing costs or savings: No requirements have been imposed to affect costs and savings.

3. Additional factors increasing or decreasing costs: There will be no additional factors affecting costs.

b. Reporting and paperwork requirements: There will be no extra paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on the state and local revenue with the promulgation of this regulation.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No costs are imposed with the promulgation of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: There were no other alternatives that would achieve compliance with KRS 13A.222.

8. Assessment of expected benefits of the administrative regulation: The benefit is having the definitions clearly stated at the beginning of each chapter.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Not applicable since no requirements are imposed.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

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10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Tiering is applied to all of Kentucky's solid waste regulations, based on type and quantity of waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed regulation establishes definitions of solid waste terms and clarifies certain definitions. This regulation is necessary to maintain consistency between state and federal programs. In addition, the regulation has been modified to reflect regulation construction specified in KRS 13A.222.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that manages solid waste.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. This administrative regulation establishes definitions for all terms within 401 KAR Chapter 47. These terms are assimilated from existing federal regulatory definitions and existing statutory definitions where applicable.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): Because this administrative regulation only establishes definitions for 401 KAR Chapter 47, this administrative regulation will not affect state, county, or local expenditures.

Other Explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (New Administrative Regulation)

401 KAR 49:005. Definitions related to 401 KAR Chapter 49.

RELATES TO: KRS 224.10, 224.40, 224.43, and 401 KAR Chapter 49

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: This chapter addresses solid waste planning in accordance with statutory changes made during the First Extraordinary Legislative Session of 1991. This administrative regulation defines essential terms that are used in this chapter.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or otherwise specifically indicated by context, terms in 401 KAR Chapter 49 shall have the meanings given in this section.

(1) "100-year floodplain" means any land area which is subject to a one (1) percent or greater chance of flooding in any given year from any source.

(2) "100-year flood" means a flood that has a one (1) percent chance of being equaled or exceeded in any given year.

(3) "Aboveground tank" means a device meeting the definition of "tank" and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

(4) "Active fault" means a land area which, according to the weight of geological evidence, has a reasonable probability of being affected by movement along a fault to the extent that a waste site or facility would be damaged and thereby pose a threat to human health and the environment.

(5) "Active life" of a facility means the period from the initial receipt of waste at a waste site or facility until the cabinet receives certification of final closure.

(6) "Active portion" means any area of a facility where treatment, storage, or disposal operations are being or have been conducted and which have not been closed. It includes the treated area of a landfarm and the active face of a landfill. Covered, closed, or inactive portions of landfills, building roofs, and roads are excluded unless designated as "active portions" by the cabinet.

(7) "Administrative application" means the standard forms and format used for applying for a solid waste site or facility permit as specified in 401 KAR 47:160 and 401 KAR 47:180.

(8) "Admixed liner" means a liner made from a mixture of any of a multitude of materials, often asphalt or cement, with widely varying physical and chemical properties. Admixed liners shall be demonstrated to be structurally sound and chemically resistant to the waste placed in it so as to be capable of supporting the waste without cracking or disintegrating or allowing waste or leachate to escape.

(9) "Agricultural waste" means any nonhazardous waste resulting from the production and processing of on-the-farm agricultural products, including manures, prunings and crop residues.

(10) "Airport" means public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

(11) "Application" means the form approved by the cabinet for applying for a permit, including any additions, revisions or modifications and any narrative and drawings required by 401 KAR Chapters 47 or 48.

(12) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(13) "Attenuation" means any decrease in the maximum concentration or total quantity of an applied chemical or biological constituent

in a fixed time or distance traveled resulting from a physical, chemical, or biological reaction or transformation occurring in the zone of aeration or zone of saturation.

(14) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit or part of a facility, such as the plant manager, superintendent, or person of equivalent responsibility.

(15) "Base flood" means a flood that has a one (1) percent or greater chance of recurring in any year, or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

(16) "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

(17) "Bird hazard" means an increase in the likelihood of bird or aircraft collisions that may cause damage to the aircraft or injury to its occupants.

(18) "Cabinet" shall have the meaning specified in KRS 224.01-010.

(19) "Cation exchange capacity" means the sum of exchangeable cations a soil can absorb expressed in milliequivalents per 100 grams of soil as determined by sampling the soil to the depth of cultivation or solid waste placement, whichever is greater, and analyzing by the summation method for distinctly acid soils or the sodium acetate method for neutral, calcareous, or saline soils.

(20) "Cell" means a portion of any landfill which is isolated, usually by means of an approved barrier.

(21) "Certification" means a statement of professional opinion based upon knowledge and belief.

(22) "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements.

(23) "Closed unit" means any solid waste unit that no longer receives waste as of May 8, 1990 and has received all required final layers of cover material.

(24) "Closure care" means the routine care, maintenance, monitoring, and any required corrective action of a solid waste disposal site or facility following certification of closure until the applicable requirements are met.

(25) "Closure" shall have the meaning specified in KRS 224.01-010.

(26) "Coal mining solid waste" means solid waste, as defined by KRS 224.01-010, that is generated at, and is incidental to, a coal exploration operation or surface mining and reclamation operation regulated under KRS Chapter 350, and shall not include wastes generated by households, communities, cities, counties, or any person or business other than those regulated under KRS Chapter 350.

(27) "Coal mining waste" means earth materials which are combustible, physically unstable, or acid-forming or toxic-forming, that are generated during and incidental to the mining and extraction of coal and to the washing and crushing of coal. The term does not include used oil, paints or flammable liquids. The term includes the following:

(a) Refuse which is that waste material in the raw coal which it is the object of cleaning to remove;

(b) Overburden which includes all of the earth and other geologic materials, excluding topsoil, which lie above a natural deposit of coal and also means such earth and other material after removal from their natural state in the process of mining; and

(c) Coal mining by-products which include any material that is not one (1) of the primary products of a particular coal mining operation,

is a secondary and incidental product of the particular operation and would not be solely and separately mined by the particular operation. The term does not include an intermediate mining product which results from one (1) of the steps in a mining process and is processed through the next step of the process within a short time. An example of a coal mining by-product is that part of the ore deposit that is too low in grade to be of economic value at the time, but which is stored separately in the hope that it can be profitably treated later.

(28) "Collection box" shall have the meaning specified in KRS 224.01-010.

(29) "Commercial solid waste" shall have the meaning specified in KRS 224.01-010.

(30) "Component" means either the tank or ancillary equipment of a tank system.

(31) "Compost" shall have the meaning specified in KRS 224.01-010.

(32) "Composting" shall have the meaning specified in KRS 224.01-010.

(33) "Conditionally exempt small quantity generator" means:

(a) A generator who generates no more than 100 kilograms of hazardous waste in a calendar month; and

(b) A generator who generates acutely hazardous waste listed in Sections 2, 3, and 4(5) of 401 KAR 31:040 in a calendar month in quantities greater than one (1) kilogram. All quantities of that acutely hazardous waste are subject to administrative regulation under 401 KAR Chapters 32 through 39, and the notification and permitting requirements of KRS 224.01-400, 224.40-310, 224.46-510, 224.46-580, and 224.50-130 to 224.50-413.

(34) "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(35) "Construction/demolition debris landfill" means a solid waste site or facility for the disposal of construction/demolition waste. The technical requirements for construction/demolition debris landfills are found in 401 KAR 47:080, 401 KAR 48:050, and 401 KAR 48:060.

(36) "Construction/demolition waste" means waste resulting from the construction, remodeling, repair, and demolition of structures and roads, and for the disposal of uncontaminated solid waste consisting of vegetation resulting from land clearing and grubbing, utility line maintenance, and seasonal and storm related cleanup.

(37) "Construction materials" means nonhazardous nonsoluble material, including but not limited to steel, concrete, brick, asphalt roofing material, or lumber from a construction or demolition project. Mixture of construction and demolition debris with any amount of other types of waste may cause it to be classified as other than construction materials.

(38) "Contained landfill" means a solid waste site or facility that accepts solid waste for disposal. The technical requirements for contained landfills are found in 401 KAR 47:080, 401 KAR 48:050, and 401 KAR 48:070 to 401 KAR 48:090.

(39) "Contaminate" means introduce a substance that would cause:

(a) The concentration of that substance in the groundwater to exceed the maximum contaminant level specified in 401 KAR 30:031, Sections 5 and 6 of 401 KAR 47:030, or Section 8 of 401 KAR 34:060;

(b) An increase in the concentration of that substance in the groundwater where the existing concentration of that substance exceeds the maximum contaminant level specified in 401 KAR 30:031, 401 KAR 47:030, or Section 8 of 401 KAR 34:060; or

(c) A significant increase above established background levels, for substances that do not have an established maximum contamination level.

(40) "Contamination" means the degradation of naturally occurring water, air, or soil quality either directly or indirectly as a result of human activities.

(41) "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in the event of a fire, explosion, or release of waste or waste constituents into the environment which has the potential for endangering human health and the environment. Financial planning to identify resources for initiation of such action is a part of contingency plan development.

(42) "Convenience center" shall have the meaning specified in KRS 224.01-010.

(43) "Cover material" means soil or other suitable material that is spread and compacted on the top and side slopes of disposed waste in order to control disease vectors, gases, erosion, fires, and infiltration of precipitation or run-on; support vegetation; provide trafficability; or assure an aesthetic appearance.

(44) "Demonstration" shall have the meaning specified in KRS 224.01-010.

(45) "Destruction or adverse modification" means an alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

(46) "Dike" means an embankment or ridge of either natural or manmade materials used to prevent the movement of liquids, sludges, solids, or other materials.

(47) "Disease vector" means all insects, birds or gnawing animals such as rats, mice or ground squirrels, which are capable of transmitting pathogens.

(48) "Disposal facility" means a facility or part of a facility at which solid waste is intentionally placed into or on any land or water and at which waste will remain after closure.

(49) "Disposal" shall have the meaning specified in KRS 224.01-010.

(50) "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(51) "Draft permit" shall have the same meaning as "proposed permit".

(52) "Effluent limitations" shall have the same meaning as KRS 224.01-010.

(53) "Emergency permit" means a permit issued by the cabinet to temporarily store, treat or dispose of hazardous waste in accordance with the provisions of Section 2 of 401 KAR 38:060, to temporarily manage, process, or dispose of a solid waste in accordance with the provisions of Section 2 of 401 KAR 47:150 or to temporarily store, treat, or dispose of special waste in accordance with the provisions of Section 1 of 401 KAR 45:135.

(54) "Endangered or threatened species" means any species listed as such pursuant to Section 4 of the Endangered Species Act, as amended, 16 USC 1536.

(55) "Engineer" shall have the meaning specified in KRS 322.010. An independent, professional engineer shall be registered in Kentucky pursuant to KRS 322.040 and shall be qualified to engage in waste management engineering practices.

(56) "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice and which has a channel bottom that is always above the local water table.

(57) "Equivalent method" means any testing or analytical method, approved jointly by the administrator and the secretary under 401 KAR Chapter 31, or methods in 401 KAR Chapters 47 and 48, approved by the secretary of the cabinet.

(58) "Existing unit" means any solid waste disposal unit that was receiving solid waste as of May 8, 1990 and has not received the final layers of cover material.

(59) "Explosive gas" means methane (CH₄).

(60) "Facility structures" means any buildings and sheds or utility or drainage lines on the solid waste site or facility.

(61) "Facility" means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating,

storing, or disposing of waste. A facility may consist of several treatment, storage, or disposal operational units, such as one (1) or more landfills, surface impoundments, or combination of them.

(62) "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation, and the United States Government Printing Office.

(63) "Final closure" of a solid waste site or facility means the approved closure of a solid waste site or facility in accordance with 401 KAR 30:031, 401 KAR 47:030 and the applicable requirements of 401 KAR 48:060, 401 KAR 48:090, 401 KAR 48:170, or 401 KAR 48:200.

(64) "Flood plain" means areas adjoining inland waters which are inundated by the base flood, unless otherwise specified in 401 KAR 30:031 or 401 KAR 47:030, and includes: 100-year floodplain and floodway.

(65) "Floodway" means the channel of the waterway, stream or river and that portion of the adjoining floodplain which provides for passage of the 100-year flood flow without increasing the floodwater depth across the 100-year floodplain by more than one (1) foot.

(66) "Food chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(67) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(68) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.

(69) "Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.

(70) "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table, and perched water zones below the B-soil horizon, including water circulating through fractures, bedding planes, and solution conduits.

(71) "Holocene" means the most recent epoch of the quaternary period, extending from the end of the pleistocene to the present.

(72) "Household solid waste" shall have the meaning specified in KRS 224.01-010.

(73) "Hydric soils" means soils that, in their undrained condition, are saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

(74) "Hydrophytic vegetation" means a plant growing either in water, or in a substrate that is at least periodically deficient of oxygen during a growing season as a result of excessive water content.

(75) "Incinerator" means any enclosed device using controlled flame combustion for burning solid waste.

(76) "Industrial solid waste" shall have the meaning specified in KRS 224.01-010.

(77) "Inert landfill" means a facility for the proper disposal of inert, nonsoluble and nonputrescible solid waste, including construction materials, certain industrial or special wastes, and other waste material with specific approval from the cabinet. Certain putrescible wood product wastes (such as cardboard, paper, sawdust, wood chips, and tree trimmings) may be considered by the cabinet for disposal at inert landfills.

(78) "Infectious waste" means those wastes which may cause disease or reasonably be suspected of harboring pathogenic organisms; included are wastes resulting from the operation of medical clinics, hospitals, and other facilities producing wastes which may consist of, but are not limited to, diseased human and animal parts, contaminated bandages, pathological specimens, hypodermic needles, contaminated clothing, and surgical gloves.

(79) "Inground tank" means a device meeting the definition of "tank" in this section and that whereby a portion of the tank is situated to any degree within the ground, thereby preventing visual inspection

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of that external surface area of the tank that is in the ground.

(80) "Intermittent stream" means a stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year.

(81) "Karst terrain" means a type of topography where limestone, dolomite or gypsum is present and is characterized by naturally occurring closed topographic depressions or sinkholes, caves, disrupted surface drainage, and well developed underground solution channels formed by dissolution of these rocks by water moving underground.

(82) "Key personnel" shall have the meaning specified in KRS 224.01-010.

(83) "Landfarming facility" means a facility for land application of sludges or other solid waste by any method for purposes of disposal. It can be on any piece or pieces of land and may improve the physical and chemical qualities of the land for agricultural purposes, but does not alter the topography of the application area as revealed by contours and will not disturb the soil below three (3) feet from the surface.

(84) "Landfill" means a solid waste site or facility for the disposal of specific wastes that is located, designated, constructed, operated, maintained, and closed in conformance with 401 KAR Chapter 47 and 48, and 401 KAR 30:031, and receives a case-by-case design review by the cabinet.

(85) "Lateral expansion" means a horizontal expansion of the waste boundaries of an existing solid waste landfill unit.

(86) "Leachate" means any liquid including any suspended components in the liquid, that has percolated through or drained from waste.

(87) "Liner" means a continuous layer of natural or manmade material, beneath or on the sides of a waste site or facility, including but not limited to a waste pile, surface impoundment, landfill, or landfill cell, or beneath or on the sides of a waste site or facility which restricts the movement of the wastes, waste constituents, or leachate.

(88) "Lower explosive limit" means the lowest percent by volume of a mixture of explosive gases which will propagate a flame in air at twenty-five (25) degrees Celsius and atmospheric pressure.

(89) "Major modification" means for solid waste sites and facilities, a change meeting the criteria in Section 3 of 401 KAR 47:130.

(90) "Management facility" means a facility or part of a facility at which solid waste is held for a temporary period, at the end of which solid waste is processed, disposed or managed elsewhere.

(91) "Materials recovery facility" shall have the meaning specified in KRS 224.01-010.

(92) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

(93) "Miscellaneous unit" means a solid waste management unit where waste is disposed and that is not a container, tank, surface impoundment, pile, landfarming unit, landfill, incinerator, underground injection well with appropriate technical standards under 40 CFR Part 146, or unit eligible for a research, development, and demonstration permit under section 3 of 401 KAR 47:150.

(94) "Monitoring well" means a well used to obtain water samples for water quality and quantity analysis and groundwater levels.

(95) "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.

(96) "Municipal solid waste disposal facility" shall have the meaning specified in KRS 224.01-010.

(97) "Municipal solid waste reduction" shall have the meaning specified in KRS 224.01-010.

(98) "Municipal solid waste" shall have the meaning specified in KRS 224.01-010.

(99) "Newsprint" shall have the meaning specified in KRS 224.01-010.

(100) "Notice of intent" means the standard forms for applying for a solid waste site or facility permit as required by 401 KAR 47:160, 401 KAR 47:170 and 401 KAR 48:200.

(101) "Off-site" means properties noncontiguous to the site.

(102) "On-site" means on the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing, as opposed to going along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access is also considered on-site property.

(103) "Open burning" means the combustion of any material or solid waste without:

(a) Control of combustion air to maintain adequate temperature for efficient combustion;

(b) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(c) Control of emission of the gaseous combustion products.

(104) "Open dump" shall have the meaning specified in KRS 224.01-010.

(105) "Onground tank" means a device meeting the definition of "tank" in this section and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external bottom of the tank cannot be visually inspected.

(106) "Operational plan" means the approved plan of operations filed with the cabinet which describes the method of operation that the permittee will use in the treatment, storage, or disposal of wastes.

(107) "Operator" means any person responsible for overall operation of an on-site or off-site waste facility, including any private contractor conducting operational activities at a federal facility.

(108) "Owner" means any person who owns an on-site or off-site waste facility, or any part of a facility.

(109) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface run-off. The term does not include "intermittent stream" or "ephemeral stream".

(110) "Periodic application of cover material" means the application and compaction of soil or other suitable material over disposed waste at a solid waste site or facility at the end of each operating day or at such frequencies and in such a manner as to reduce the risks of fire and to impede disease vector's access to the waste.

(111) "Permit by rule" means authorization allowing certain classes of sites or facilities to manage waste consistent with 401 KAR Chapters 30 to 49, without submission of a registration or permit application to the cabinet. Examples of solid waste sites or facilities which are permitted by rule include facilities identified in 401 KAR 47:150.

(112) "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management administrative regulations. The term permit includes permit-by-rule, registered permit-by-rule, research, development, and demonstration permit, and emergency permit. However, the term permit does not include draft permit or proposed permit.

(113) "Permittee" means any person holding a valid permit issued by the cabinet to manage, treat, store, or dispose of waste.

(114) "Person" shall have the meaning specified in KRS 224.01-010.

(115) "Personnel" or "facility personnel" means all persons who work at or oversee the operations of a waste facility, and whose actions or failure to act may result in noncompliance with the requirements of the waste management administrative regulations.

(116) "Pile" or "waste pile" means any noncontainerized accumulation of nonflowing solid waste that is used for processing or management.

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- (117) "Point of compliance" means for solid waste site and facilities, groundwater monitoring wells located within 250 feet of the waste boundary as approved by the cabinet.
- (118) "Point source" means any discernible, confined, and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.
- (119) "Pollutant" shall have the same meaning as KRS 224.01-010.
- (120) "Polychlorinated biphenyls" or "PCB" means halogenated organic compounds defined in accordance with 40 CFR 761.2 as of July 1989.
- (121) "Postclosure" shall have the same meaning as "closure care."
- (122) "Postclosure care" means the manner in which a facility shall be maintained when it no longer accepts waste for disposal.
- (123) "Postclosure monitoring and maintenance" shall have the meaning specified in KRS 224.01-010.
- (124) "Postconsumer waste paper" shall have the meaning specified in KRS 224.01-010.
- (125) "Processing facility" means a facility or part of a facility using any method, technique or procedure, including neutralization, designed to change the physical, chemical, or biological character or composition of any solid waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for handling or reduced in volume.
- (126) "Proposed permit" means a document prepared by the cabinet indicating the cabinet's tentative decision to issue or deny, modify, revoke or terminate a permit.
- (127) "Publicly owned treatment works" or "POTW" shall have the meaning specified in KRS 224.01-010.
- (128) "Publisher" shall have the meaning specified in KRS 224.01-010.
- (129) "Putrescible" means susceptible to rapid decomposition by bacteria, fungi, or oxidation sufficient to cause nuisances such as odors, gases, or other offensive conditions.
- (130) "Qualified groundwater scientist" means a geologist registered in Kentucky who has received a baccalaureate or postgraduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields to enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.
- (131) "Recharge zone" means an area supplying the water which enters an underground drinking water source.
- (132) "Recovered material processing facility" shall have the meaning specified in KRS 224.01-010.
- (133) "Recovered material" shall have the meaning specified in KRS 224.01-010.
- (134) "Recycled content" shall have the meaning specified in KRS 224.01-010.
- (135) "Recycling center" means a facility or a part of a facility at which solid waste is received and managed in a manner amenable for the recovery of material or energy. This term does not include recycling facilities.
- (136) "Recycling facility" means a facility or a part of a facility at which solid waste is processed to reclaim material or energy from the solid waste.
- (137) "Recycling" shall have the meaning specified in KRS 224.01-010.
- (138) "Refuse-derived fuel" shall have the meaning specified in KRS 224.01-010.
- (139) "Registered permit by rule" means that certain classes of solid waste sites or facilities as specified in 401 KAR 47:080 have a permit as provided in 401 KAR 47:110 or 401 KAR 48:200.
- (140) "Representative sample" means a sample of a universe or whole (for example, waste pile, lagoon, or groundwater) which can be expected to exhibit the average properties of the universe or whole.
- (141) "Research, development, and demonstration permit" means a solid waste treatment or disposal facility using innovative and experimental technology as specified in sections of 401 KAR 47:150.
- (142) "Residential landfill" means a facility for the proper disposal of solid waste including residential waste, commercial waste, institutional waste, and those sludges, industrial or special waste with specific approval from the cabinet.
- (143) "Residual landfill" means a facility for the disposal of specific solid waste(s), including special waste, which is located, designed, constructed, operated, maintained, and closed in conformance with 401 KAR 30:031 and 401 KAR 47:030 and which receives a case-by-case design review by the cabinet.
- (144) "Resource recovery" means the recovery of material or energy from waste.
- (145) "Run-off" means any rainwater, leachate, or other liquid that drains overland from any part of a facility.
- (146) "Run-on" means any rainwater, leachate, or other liquid that drains overland onto any part of a facility.
- (147) "Salvaging" means the controlled removal of waste materials for utilization in a manner approved by the cabinet.
- (148) "Sanitary landfill" means a facility for the disposal of solid waste that complies with 401 KAR 30:031 and 401 KAR 47:030.
- (149) "Saturated zone" shall have the same meaning as "zone of saturation".
- (150) "Scavenging" means the removal of waste materials from a waste management site or facility in a manner deemed by the cabinet to be dangerous to the health and safety of any person.
- (151) "Schedule of compliance" means a schedule of remedial measures included in a permit or cabinet order, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with KRS Chapter 224 and 401 KAR Chapters 30 to 49.
- (152) "Secretary" shall have the meaning specified in KRS 224.01-010.
- (153) "Sewage system" shall have the meaning specified in KRS 224.01-010.
- (154) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the waste facility or activity.
- (155) "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 BTU per pound of sludge treated on a wet-weight basis.
- (156) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.
- (157) "Small quantity generator" means a generator who generates more than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month.
- (158) "Solid waste" shall have the same meaning as KRS 224.01-010.
- (159) "Solid waste management area" or "area" shall have the meaning specified in KRS 224.01-010.
- (160) "Solid waste management facility" shall have the meaning specified in KRS 224.01-010.
- (161) "Solid waste management" shall have the meaning specified in KRS 224.01-010.
- (162) "Solid waste site or facility" means any place at which solid waste is managed, processed or disposed by landfilling, incineration, landfarming or any other method. The term includes: construction/demolition debris landfill; collection box; contained landfill;

convenience center; disposal facility; incinerator; injection well; landfarming facility; management facility; miscellaneous unit; municipal solid waste disposal facility; pile or waste pile; processing facility; recycling center; recycling facility; residual landfill; sanitary landfill; surface impoundment; tank; transfer facility; unit or solid waste unit; wastewater treatment unit; inert landfill; or residential landfill.

(163) "Solid waste unit" means a contiguous area of land on or in which solid waste is placed, or the largest area in which there is significant likelihood of mixing waste constituents in the same area. Examples of solid waste units include a surface impoundment, a waste pile, a land processing area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system, and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

(164) "State" means any of the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands or Guam but does not include any foreign country.

(165) "Storage" shall have the meaning specified in KRS 224.01-010.

(166) "Surface impoundment" means a facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(167) "Tank" means a stationary device designed to contain an accumulation of leachate or solid waste waste that is constructed primarily of nonearthen materials (for example, wood, concrete, steel, or plastic) which provide structural support.

(168) "Tank system" means a solid waste tank and its associated piping, ancillary equipment and containment system.

(169) "Technical application" means the standard format for applying for a solid waste site or facility permit as specified in 401 KAR 47:160 and 401 KAR 47:190.

(170) "Termination" shall have the meaning specified in KRS 224.01-010.

(171) "Transfer facility" shall have the meaning specified in KRS 224.01-010.

(172) "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body is a separate transport vehicle.

(173) "Transportation" shall have the meaning specified in KRS 224.01-010.

(174) "Trenching or burial operation" means the placement of sewage sludge or septic tank pumpings in a trench or other natural or manmade depression and the covering with soil or other suitable material at the end of each operating day such that the waste does not migrate to the surface.

(175) "Underground drinking water source" means:

(a) An aquifer supplying drinking water for human consumption; or

(b) An aquifer in which the groundwater contains less than 10,000 mg/l total dissolved solids.

(176) "Underground tank" means a device meeting the definition of "tank" in this section whose entire surface area is totally below the surface of and covered by the ground.

(177) "Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of managing or processing solid waste without posing a threat of release of waste to the environment.

(178) "Unit" shall have the same meaning as "Solid Waste Unit".

(179) "Universal collection" shall have the meaning specified in KRS 224.01-010.

(180) "Unsaturated zone" shall have the same meaning as "Zone

of aeration".

(181) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(182) "Vessel" means any watercraft used or capable of being used as a means of transportation on the water.

(183) "Washout" means the carrying away of waste by waters as a result of flooding.

(184) "Waste boundary" means:

(a) The outermost perimeter of the waste (projected in the horizontal plane) as it would exist at completion of the disposal activity; or

(b) An alternative boundary for a solid or special waste disposal facility which may be used in lieu of paragraph (a) when the cabinet finds that such a change would not result in the contamination of groundwater which may be needed or used for human consumption. Such a finding shall be based on an analysis and consideration of all the factors identified in the following subparagraphs of this paragraph that are relevant:

1. The hydrogeological characteristics of the facility and surrounding land including any natural attenuation and dilution characteristics of the aquifer;

2. The volume and physical and chemical characteristics of the leachate;

3. The quantity, quality, and direction of flow of groundwater underlying the facility;

4. The proximity and withdrawal rates of groundwater users;

5. The availability of alternative drinking water supplies;

6. The existing quality of the groundwater, including other sources of contamination and their cumulative impacts on the groundwater; and

7. Public health, safety, and welfare effects.

(185) "Waste disposal facility" shall have the same meaning as KRS 224.40-310.

(186) "Waste management district" shall have the meaning specified in KRS 224.01-010.

(187) "Waste pile" shall have the same meaning as "pile".

(188) "Waste site or facility" shall have the meaning specified in KRS 224.01-010.

(189) "Waste" shall have the meaning specified in KRS 224.01-010.

(190) "Wastewater treatment unit" means a tank which is part of a wastewater treatment facility which is subject to administrative regulation under either Section 402 or Section 307(b) of the Clean Water Act of 1972 and which receives, treats, stores, generates, or accumulates influent wastewater or receives, manages, processes, generates or accumulates wastewater treatment sludge, either of which is a solid waste.

(191) "Water pollution" shall have the meaning specified in KRS 224.01-010.

(192) "Water" or "waters of the Commonwealth" shall have the meaning specified in KRS 224.01-010.

(193) "Well" means any shaft or pit dug or bored into the earth, generally of cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(194) "Wetlands" means land that has a predominance of hydric soils and is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(195) "Zone of aeration" means that region of the soil or rock between the land surface and the nearest saturated zone in which the interstices are occupied partially by air.

(196) "Zone of incorporation" means the depth to which the soil on a landfarm is plowed, tilled, or otherwise designed to receive waste.

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(197) "Zone of saturation" means that part of the earth's crust containing groundwater in which all voids, large and small, are filled with liquid.

Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by context, acronyms and abbreviations used in 401 KAR Chapter 49 shall have the meaning as identified in Table 1 of this administrative regulation.

Table 1. Acronyms and Abbreviations.

ASTM	American Society for Testing Materials
CFR	Code of Federal Regulations
CWA	Clean Water Act, as amended
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980
DEP	Kentucky Department for Environmental Protection
EPA	United States Environmental Protection Agency
KAR	Kentucky Administrative Regulation
kg	Kilogram
KPDES	Kentucky Pollution Discharge Elimination System
KRS	Kentucky Revised Statute
l	Liter
MCL	Maximum Contaminant Level
mg	milligram
NPDES	National Pollutant and Discharge Elimination System
OSHA	U.S. Occupational Safety and Health Administration
PCB	Polychlorinated biphenyl
POTW	Publicly owned treatment works
PSD	Prevention of significant deterioration
SCS	Soil Conservation Service
U.S. EPA	United States Environmental Protection Agency
USDA	United States Department of Agriculture

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal

opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: This regulation does not affect any entities, because it only defines terms used in the chapter. The regulation was promulgated to comply with KRS 13A.222.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First Year: The cabinet will experience no additional costs or savings by promulgating the amendments to this regulation.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: There will be no additional factors affecting costs.

b. Reporting and paperwork requirements: There will be no extra paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on the state and local revenue with the promulgation of this regulation.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No costs are imposed with the promulgation of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: There were no other alternatives that would achieve compliance with KRS 13A.222.

8. Assessment of expected benefits of the administrative regulation: The benefit is having the definitions clearly stated at the beginning of each chapter.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Not applicable since no requirements are imposed.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are

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no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Tiering is applied to all of Kentucky's waste regulations, based on type and quantity of waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments establish definitions of solid waste terms and clarify certain definitions. This regulation is necessary to maintain consistency between state and federal programs. In addition, the regulation has been modified to reflect regulation construction specified in KRS 13A.222.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that manages solid waste.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. This administrative regulation establishes definitions for all terms within 401 KAR Chapter 49. These terms are assimilated from existing federal regulatory definitions and existing statutory definitions where applicable.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): Because this administrative regulation only establishes definitions for 401 KAR Chapter 49, this administrative regulation will not affect state, county, or local expenditures.

Other Explanation: None

JUSTICE CABINET Division of Charitable Gaming (New Administrative Regulation)

500 KAR 11:110. Keno.

RELATES TO: KRS 238.505(17)

STATUTORY AUTHORITY: KRS 238.505(17), 238.515(2), (9)

NECESSITY AND FUNCTION: The Division of Charitable Gaming is authorized to establish circumstances under which "special limited charitable games" will be conducted. This administrative regulation establishes standards for the conduct of Keno, establishes reporting requirements, and establishes standards for the use of Keno equipment.

Section 1. Recordkeeping and Reporting Requirements. (1) For a period of thirty-six (36) months following the last date of the special limited charitable games, the charitable organization shall maintain accurate records as to the conduct of the Keno games. The records shall include:

- (a) The information contained in the transaction log;
- (b) Payout information for each game played;
- (c) The number draw and time of the draw for each game played;
- (d) Appropriate system parameter information including probable payout percentages and odds of winning for each game played;
- (e) System exception information including voids and late pays for each game played; and
- (f) The exception log.

(2) Other Keno records. The charitable organization shall retain all outside copies of winning tickets of \$500 or more for a period of thirty-six (36) months following the date of the Keno games.

(3) At least once during each day of the special limited charitable games, the computer shall automatically update and generate a "daily game summary report", which shall be retained for a period of thirty-six (36) months following the date of the Keno games.

Section 2. Conduct of the Game - Keno. The following rules govern the conduct of Keno.

(1) All individuals involved in any way in the conduct of Keno shall be trained in the proper conduct of the game and the control of funds.

(2) Participation.

(a) No person under the age of eighteen (18) shall play or conduct the game of Keno.

(b) No individual involved in any capacity in the conduct of Keno at a charitable gaming event shall be permitted to play Keno at the same event and on the same day in which such individual was involved in the conduct of Keno.

(3) Only computerized Keno games may be conducted. Brush or manual games are prohibited.

(4) No player shall have access to, or be allowed to activate, the Keno equipment. Each number selected by the player, along with the amount wagered and the total numbers played shall be entered into the computer, and an outside ticket shall be presented to the player. The inside ticket shall be retained for such period deemed necessary by the Keno manager.

(5) Players shall mark the inside ticket with their number selections or selection by quick pick is permissible.

(a) Concurrently with the generation of the outside ticket, the information on the outside ticket shall be recorded on the transaction log.

(b) If a ticket is voided, the void information shall be input in the computer, and the computer shall document the appropriate information pertaining to the voided wager. A void slip shall then be issued, which shall be retained with the outside tickets to serve as documentation of the transaction.

(6) If the Keno equipment breaks down or malfunctions during the

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selection of the winning numbers and the problem is not promptly corrected, players shall be refunded the amount wagered upon presenting their outside ticket.

(7) Once the Keno manager is satisfied that all tickets for a game have been issued, the game shall be closed and all players shall be so notified. No tickets may be written or voided after a game has been closed and the number selection process has begun. Controls shall exist to prevent the writing and voiding of tickets after a game has been closed and after the number selection process has begun.

(8) The potential payout or prize for each different type of wager shall be made known to the players prior to their selecting numbers. This may be done through posting the potential payouts in a manner clearly visible to the players or through a printed schedule that is available at each location where Keno is played.

(9) No ticket, including a way ticket, may be purchased representing a wager of over five (5) dollars, except that a multirace ticket may be purchased for an amount over five (5) dollars if the wager for each game does not exceed five (5) dollars.

(10) A statement indicating any time restrictions for redeeming a winning ticket shall be visibly posted at each location where Keno is played or printed on the outside ticket or the schedule of prize payouts.

(11) The outside ticket that is given to the player shall contain the following information:

- (a) Date of the game;
- (b) Numbers chosen by the player;
- (c) Ticket sequence number;
- (d) Conditioning of the ticket;
- (e) Station number where the ticket was generated;
- (f) Game number; and
- (g) The name of the charitable organization.

(12) A draw ticket shall be prepared by the computer.

(13) A player shall wait until the last game wagered on has been called in order to collect any winnings. A player may be allowed to play fewer consecutive games than originally indicated, if approval has been obtained from the Keno manager and the voided wagers are properly documented in the transaction log.

Section 3. Winner Verification. Winning tickets shall be verified prior to payout and paid in the following manner:

(1) Procedures shall be established to preclude payment of a ticket previously presented for payment, unclaimed winning tickets after a specified period of time, voided tickets, and tickets which have not been issued.

(2) The sequence number of a ticket presented for payment shall be input into the computer, and the payment amount shall be generated by the computer and shall be given to the player.

(3) No payouts shall be made unless a winning outside ticket has been presented. If the payout amount is not indicated on the outside ticket, a payout slip shall be issued.

(4) The exception log shall be produced and maintained documenting any payments made on tickets which have not been authorized by the computer.

(5) In addition to computer system approval, winning tickets of fifty (50) dollars through \$250 shall be verbally verified by the Keno manager, winning tickets of over \$250 require the signature of the Keno manager and winning tickets of \$1,000 or more require approval of the Keno manager evidenced by his signature, the performance of comparison of the winning customer outside ticket to the transaction log and a regrading of the customer copy using the payout schedule and draw information.

Section 4. Security Standards and Controls. Access to the area in which Keno workers operate shall be restricted to charitable organization workers and authorized equipment service personnel only. Access to the computer system shall be adequately restricted, and the computer and Keno supplies shall be maintained under lock

and key while not in use. These keys shall be maintained only by the designated chairperson of the charitable organization.

Section 5. Keno Tournaments Prohibited. Tournaments, whereby players pay an entry fee for a certain amount to play a number of Keno games and where prizes are awarded from a pool of entry fees paid back to the players based on their scores, are prohibited. Keno leagues played in a similar fashion as Keno tournaments are also prohibited.

Section 6. Progressive Keno Games Prohibited. Games with a prize payout that increases by a predetermined percentage or amount as each game is played if the prize has not been awarded in a previous game are also prohibited.

Section 7. Prize Payouts. (1) No individual prize valued in excess of \$25,000 may be awarded in any Keno game.

(2) Every charitable organization shall have sufficient funds available to pay every winner of its Keno games by the end of the business day following the date such winning ticket is verified. Every winning prize shall be paid in full to the winning player and shall not be paid over a period of time or through an annuity, unless such annuity is the prize.

(3) For any prizes valued at \$10,000 or more, the charitable organization shall have sufficient funds insured or guaranteed by:

(a) An insurance company licensed to transact business in Kentucky;

(b) Money deposited into an insured account maintained by a financial institution and held in escrow for these purposes;

(c) An irrevocable letter of credit issued by a financial institution; or

(d) A bond from a bonding company registered to do business in Kentucky.

(4) If two (2) or more tickets fulfill the requirements for winning the largest prize on the same game, the full prize shall be divided equally among the winning tickets subject to any prize payout limit per game. Applicable prize payout limits shall be legibly posted at each location where Keno is played and printed on the schedule of prize payouts.

(5) All unclaimed prizes shall be the property of the charitable organization.

(6) All winning tickets of \$500 or more shall be paid to the player by check and not in cash, made payable to the order of the player.

(7) If there are multiple players on the same winning ticket and the prize is \$500 or more, the prize payment shall also be paid by a single check and not in cash, made payable to the order of the players.

Section 8. Payout Structure. Each game of Keno shall be conducted in such a manner that the probable payout percentage for each game shall not exceed seventy-five (75) percent.

Section 9. Keno Equipment Maintenance and Standards. (1) An effective maintenance plan shall be established to service Keno equipment, including computer program updates, hardware servicing, and Keno number selection equipment.

(2) With the exception of routine maintenance, all Keno equipment maintenance shall be performed by the manufacturer's or distributor's authorized service personnel. Routine maintenance shall include clearing of ticket printer paper jams, changing printer heads and cutter bars, and changing paper tape, adding paper to the ticket printer or aligning the paper on the ticket printer.

(3) A manufacturer or distributor shall not offer or market any type of Keno equipment unless the equipment complies with the requirements contained in this section.

(4) The division shall have the authority to request the testing and approval of any Keno equipment at any time if deemed necessary in order to ensure fairness to the public and maintain the integrity of the

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game.

(5) Hardware requirements.

(a) All electrical and mechanical parts and design principles shall follow acceptable industrial codes in standards in both design and manufacture.

(b) Logic boards and software EPROM's shall be in a locked or sealed area within the machine or in a separate machine. No access to this area is allowed by persons other than the manufacturer's or distributor's authorized service personnel. Any unauthorized tampering or entrance into the logic area is prohibited.

(c) All PROMs and EPROMs shall have unique serial numbers that may be used to identify the PROMs and EPROMs for approval and inspection purposes. All logic boards shall have unique serial numbers or model numbers for approval and inspection purposes.

(d) A machine shall have a nonremovable identification label externally attached to the machine which includes the name of the manufacturer, the serial number of the machine and the model or make of the machine.

(6) Machine protection and integrity.

(a) A surge protector that feeds all power to the equipment shall be installed.

(b) The operation of the Keno equipment shall be impervious to influences from the outside of the device, including electro-magnetic interference, electro-static interference, and radio frequency interference.

(c) All computer functions and programs shall be secured in a locked and protective housing.

(d) The design of the Keno equipment shall ensure that there are no readily accessible game function related points which would allow any input and that there is no access to input or output circuits unless it is necessary for the proper operation of the equipment. No switches or other controlling devices may be added to the machine that would cause the machine to operate in a manner other than in which it was designed to play.

(7) Software requirements.

(a) The logic of the hardware or software may not interfere with the random number generator software.

(b) The software shall meet the minimum internal control standards for the conduct of Keno.

(c) Machine programs shall be capable of detecting corruption and shall provide an error message due to failure of the program storage media and cause the machine to cease play until corrected.

(d) All programs residing in the equipment shall be contained in a storage media which is not alterable through any use of the circuitry or programming of the machine itself.

(8) Retention of game data.

(a) No Keno equipment shall have a mechanism whereby an error will cause the game data to automatically clear. Game data shall be maintained at all times regardless of whether the machine is being supplied with power.

(b) Game data shall be stored in such a way as to prevent loss of the data when replacing parts or modules during normal maintenance.

(9) Random number generator. Random number generator selection device. A random number generator shall reside on a PROM or EPROM secured in the logic board of the computer. The numbers selected by the random number generator for each game shall be stored in the computer's memory and be capable of being output to produce a draw ticket with no manual input of the numbers required. Each possible combination of numbers which produce winning or losing game outcomes shall be available for random selection at the initiation of each game. The random selection process shall not produce any patterns of game outcomes, or be dependent upon any previous number selections or game outcomes, the amount wagered, or upon the style or method of play.

(10) Printer.

(a) The numbers that the player selects shall be printed on the

outside ticket.

(b) The printer mechanism shall have a paper-sensing device that upon sensing a "paper low" condition will allow the machine to finish printing the ticket and then prevent further ticket writing.

(c) Each machine shall recognize a printer power loss occurrence and cease play until power has been restored to the printer and the machine is capable of producing a valid ticket.

(d) Printed game data shall be printed in ink that will remain legible throughout the retention period required by Section 1 of this administrative regulation.

E. DANIEL CHERRY, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Friday, August 23, 1996, at 9 a.m. at the Division of Charitable Gaming Conference Room, Suite 100, Bush Building, 403 Wapping Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by August 18, 1996, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost therefore to be borne by the requesting party. If you do not wish to attend the public hearing, you may submit comments on this administrative regulation by August 23, 1996. Send written notification to attend the public hearing or comments on this administrative regulation to: Sarah M. Jackson, Director, Division of Charitable Gaming, 403 Wapping Street, Bush Building, Suite 100, Frankfort, Kentucky 40601-2639, PH: (502) 564-5528, FAX: (502) 564-6625.

REGULATORY IMPACT ANALYSIS

Contact Person: Sarah M. Jackson

(1) Type and number of entities affected: Indeterminate number of licensed charitable organizations which desire to conduct Keno as a "special limited charitable game" and manufacturers and distributors of such equipment.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: The administrative regulation imposes on licensed charitable organizations the duty of retaining certain information related to the conduct of Keno for a specific time period, and this requirement will call for limited paperwork or recordkeeping functions on these entities. Moreover, the charitable organizations will be required to take steps to ensure continuing compliance with the limitations established by the administrative regulation. Finally, manufacturers and distributors must ensure that their equipment complies with the manufacturing requirements contained in this regulation.

2. Second and subsequent years: The administrative regulation imposes on licensed charitable organizations the duty of retaining certain information related to the conduct of Keno for a specific time period, and this requirement will call for limited paperwork or

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recordkeeping functions on these entities. Moreover, the charitable organizations will be required to take steps to ensure continuing compliance with the limitations established by the administrative regulation. Finally, manufacturers and distributors must ensure that their equipment complies with the manufacturing requirements contained in this regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Some increase in staff time is expected as part of the process of approving Keno equipment.

2. Continuing costs or savings: Some increase in staff time is expected as part of the process of approving Keno equipment, which is expected to decrease over time.

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: Charitable organizations will be required to retain certain information related to the conduct of Keno. In addition, to the extent charitable organizations or other entities report defects in the Keno equipment, the Division of Charitable Gaming will have reporting requirements associated with informing the distributors or manufacturers of the reports.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Charitable Gaming Regulatory Account (KRS 238.570(2)).

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Division of Charitable Gaming, in devising the Keno regulations, relied heavily on standards adopted by other states which authorize the conduct of Keno.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applicable in this instance as regulation applies equally to all licensees.

JUSTICE CABINET

Division of Charitable Gaming (New Administrative Regulation)

500 KAR 11:120. Other allowable expenses.

RELATES TO: KRS 238.550(3)

STATUTORY AUTHORITY: KRS 238.515(2), (9)

NECESSITY AND FUNCTION: The Division of Charitable Gaming is authorized to approve expenses determined to be legitimate but which have not already been authorized by statute. This administrative regulation establishes such expenses.

Section 1. Other Allowable Expenses. In addition to those authorized expenses provided for in KRS 238.550(3), each of the

following expenses are determined to be legitimate and are allowable expenses of a licensed charitable organization:

(1) The following customary and usual banking fees or charges paid to any financial institution in connection with an organization's charitable gaming account:

(a) Monthly service charges;

(b) Check verification service charges;

(c) Check printing charges;

(d) Charges relating to returned checks; and

(e) Copying charges for bank records.

(2) Customary and usual fees or charges paid to a check verification company incurred in connection with the organization's charitable gaming activities.

(3) Customary and usual fees or charges incurred with accepting and processing credit card purchases from patrons at the organization's charitable gaming activities.

(4) Food or clothing provided to volunteers as authorized in 500 KAR 11:060.

(5) Payments made to the Division of Charitable Gaming.

(6) Printing costs incurred in connection with an organization's charitable gaming activities.

(7) Payments for the purchase of prizes to be awarded during the organization's conduct of charitable gaming.

E. DANIEL CHERRY, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Friday, August 23, 1996, at 9 a.m. at the Division of Charitable Gaming Conference Room, Suite 100, Bush Building, 403 Wapping Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by August 18, 1996, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost therefore to be borne by the requesting party. If you do not wish to attend the public hearing, you may submit comments on this administrative regulation by August 23, 1996. Send written notification to attend the public hearing or comments on this administrative regulation to: Sarah M. Jackson, Director, Division of Charitable Gaming, 403 Wapping Street, Bush Building, Suite 100, Frankfort, Kentucky 40601-2639, PH: (502) 564-5528, FAX: (502) 564-6625.

REGULATORY IMPACT ANALYSIS

Contact Person: Sarah M. Jackson

(1) Type and number of entities affected: All licensed charitable organizations, currently 772.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

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(a) Direct and indirect costs or savings:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Charitable Gaming Regulatory Account (KRS 238.570(2)).

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Other types of expenses were considered but were not determined to be appropriate expenses.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applicable in this instance as regulation applies equally to all Division of Charitable Gaming staff.

KENTUCKY JUSTICE CABINET Department of Criminal Justice Training (New Administrative Regulation)

503 KAR 4:010. Definitions for 503 KAR Chapter 4.

RELATES TO: HB 40

STATUTORY AUTHORITY: HB 40

NECESSITY AND FUNCTION: HB 40 stipulates that uniform administrative regulations be developed to certify and decertify firearms instructors teaching the courses authorized by HB 40. This administrative regulation defines the terms used in 503 KAR Chapter 4.

Section 1. Definitions. (1) "Applicant training course" means a course of instruction taught by a qualified firearms instructor to certify persons as competent with firearms as required by HB 40.

(2) "Certifying agency" means the state or federal agency that qualifies students as competent with firearms.

(3) "The department" means the Department of Criminal Justice Training.

(4) "Instructor candidate" means a person who is attempting to qualify to become a qualified firearms instructor or instructor trainer by taking a course offered or approved by the department.

(5) "Instructor trainer" means a qualified firearms instructor who has met additional requirements as stipulated in this administrative regulation and has been certified by the department to train qualified firearms instructors.

(6) "Qualified firearms instructor" means a person who has met the requirements of this administrative regulation and has been

certified by the department to teach applicant training courses.

(7) "Student" means a person taking an applicant training course.

JOHN W. BIZZACK, Commissioner

E. DANIEL CHERRY, Secretary

APPROVED BY AGENCY: July 12, 1996

FILED WITH LRC: July 12, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 23, 1996 at 2 p.m. at the Department of Criminal Justice Training, Funderburk Building, Room 211, Eastern Kentucky University, Kit Carson Drive, Richmond, Kentucky 40475-3137. Individuals interested in attending this hearing shall notify this agency in writing by August 18, 1996 five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the date, the hearing may be cancelled. The hearing is open to the public. Any person who attends 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Bernie Thompson, Department of Criminal Justice Training, Funderburk Building, Kit Carson Drive, Richmond, Kentucky 40475-3137, (606) 622-1023.

REGULATORY IMPACT ANALYSIS

Contact Person: Bernie Thompson

(1) Type and number of entities affected: Administrative regulation is expected to affect approximately 150-200 instructor trainers, 1500 instructors and 150,000-20,000 applicants.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from public comments received: No public comment received. Persons becoming firearms instructors will supplement their income to some degree.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from public comments received: No public comment received. This administrative regulation should have no impact on cost of doing business in any geographical area.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Applicants will fill out application form, sign waiver form and form acknowledging receipt of copies of certain Kentucky revised statutes. Permanent records to be maintained by DOCJT.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Fees charged to applicants are expected to cover costs of: instructors, class materials, facilities and record keeping. This should be cost neutral.

1. First year: There will be start-up costs of \$100,000 which will be recovered through fees.

2. Continuing costs or savings: Fees will continue to cover cost of instructors, facilities, materials, and record keeping. Start-up cost of \$100,000 will also be recovered.

3. Additional factors increasing or decreasing costs: None have been identified. Costs should remain steady.

(b) Reporting and paperwork requirements: Applications, test results, waiver, and acknowledgment of receipt of KRS statutes will be maintained permanently by DOCJT. Certificates of successful completion of course will be sent to applicants.

(4) Assessment of anticipated effect on state and local revenues:

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This program is expected to be self-sustaining and will have no effect on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fees from applicants are expected to support implementation and enforcement of this administrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Administrative regulation will be implemented statewide. No public comments have been received. Minimal economic impact is expected.

(b) Kentucky: Minor income will be generated for instructors who will likely teach the required curriculum to applicants on a part-time basis.

(7) Assessment of alternative methods; reasons why alternatives were rejected: These administrative regulations were mandated by HB 40. No other alternatives existed.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Public safety should benefit from applicants being required to be taught a specified curriculum on safe use of a weapon.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Could be detrimental only to degree that persons carrying concealed deadly weapons have no training in safety and use of force.

(c) If detrimental effect would result, explain detrimental effect: Safety would be reduced. Improper use of deadly weapon could result in liability suits.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? To a limited degree. Tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates. Disparate treatment of any persons or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The training program involves two "layers" of instructors. The expectation is to train 150-200 instructor trainers. They in turn will train approximately 1,500 instructors. The 1,500 will then train those applying for a license to carry a concealed deadly weapon. Instructor trainers will be required to have completed a certified firearms instructor course. Otherwise, all standards are the same.

KENTUCKY JUSTICE CABINET Department of Criminal Justice Training (New Administrative Regulation)

503 KAR 4:020. Teaching and advertising courses.

RELATES TO: HB 40

STATUTORY AUTHORITY: HB 40

NECESSITY AND FUNCTION: HB 40 stipulates that uniform administrative regulations be developed to certify and decertify firearms instructors teaching courses authorized by HB 40. This administrative regulation establishes who may teach applicant training courses, and prohibits those not certified from representing their

courses as meeting the requirements of HB 40.

Section 1. Persons who are not qualified firearms instructors shall not teach applicant training courses.

Section 2. Persons who are not qualified firearms instructors shall not advertise or otherwise represent courses they teach as qualifying their students to meet the requirements to receive a license to carry concealed deadly weapons in Kentucky.

Section 3. Persons who are not certified instructor trainers shall not teach instructor qualification courses.

JOHN W. BIZZACK, Commissioner

E. DANIEL CHERRY, Secretary

APPROVED BY AGENCY: July 12, 1996

FILED WITH LRC: July 12, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 23, 1996 at 2 p.m. at the Department of Criminal Justice Training, Funderburk Building, Room 211, Eastern Kentucky University, Kit Carson Drive, Richmond, Kentucky 40475-3137. Individuals interested in attending this hearing shall notify this agency in writing by August 18, 1996 five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the date, the hearing may be cancelled. The hearing is open to the public. Any person who attends 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Bernie Thompson, Department of Criminal Justice Training, Funderburk Building, Kit Carson Drive, Richmond, Kentucky 40475-3137, (606) 622-1023.

REGULATORY IMPACT ANALYSIS

Contact Person: Bernie Thompson

(1) Type and number of entities affected: Administrative regulation is expected to affect approximately 150-200 instructor trainers, 1500 instructors and 150,000-20,000 applicants.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from public comments received: No public comment received. Persons becoming firearms instructors will supplement their income to some degree.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from public comments received: No public comment received. This administrative regulation should have no impact on cost of doing business in any geographical area.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Applicants will fill out application form, sign waiver form and form acknowledging receipt of copies of certain Kentucky revised statutes. Permanent records to be maintained by DOCJT.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Fees charged to applicants are expected to cover costs of: instructors, class materials, facilities and record keeping. This should be cost neutral.

1. First year: There will be start-up costs of \$100,000 which will be recovered through fees.

2. Continuing costs or savings: Fees will continue to cover cost of instructors, facilities, materials, and record keeping. Start-up cost of \$100,000 will also be recovered.

3. Additional factors increasing or decreasing costs: None have been identified. Costs should remain steady.

(b) Reporting and paperwork requirements: Applications, test results, waiver, and acknowledgment of receipt of KRS statutes will be maintained permanently by DOCJT. Certificates of successful completion of course will be sent to applicants.

(4) Assessment of anticipated effect on state and local revenues: This program is expected to be self-sustaining and will have no effect on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fees from applicants are expected to support implementation and enforcement of this administrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Administrative regulation will be implemented statewide. No public comments have been received. Minimal economic impact is expected.

(b) Kentucky: Minor income will be generated for instructors who will likely teach the required curriculum to applicants on a part-time basis.

(7) Assessment of alternative methods; reasons why alternatives were rejected: These administrative regulations were mandated by HB 40. No other alternatives existed.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Public safety should benefit from applicants being required to be taught a specified curriculum on safe use of a weapon.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Could be detrimental only to degree that persons carrying concealed deadly weapons have no training in safety and use of force.

(c) If detrimental effect would result, explain detrimental effect: Safety would be reduced. Improper use of deadly weapon could result in liability suits.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? To a limited degree. Tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates. Disparate treatment of any persons or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The training program involves two "layers" of instructors. The expectation is to train 150-200 instructor trainers. They in turn will train approximately 1,500 instructors. The 1,500 will then train those applying for a license to carry a concealed deadly weapon. Instructor trainers will be required to have completed a certified firearms instructor course. Otherwise, all standards are the same.

KENTUCKY JUSTICE CABINET
Department of Criminal Justice Training
(New Administrative Regulation)

503 KAR 4:030. Instructor qualifications.

RELATES TO: HB 40

STATUTORY AUTHORITY: HB 40

NECESSITY AND FUNCTION: HB 40 stipulates that uniform administrative regulations be developed to certify and decertify firearms instructors teaching courses authorized by HB 40. This administrative regulation establishes the qualifications for persons teaching applicant training course.

Section 1. Persons wishing to become qualified firearms instructors shall:

- (1) Be at least twenty-one (21) years of age;
- (2) Be a citizen of the United States; and
- (3) Meet the requirements of Section 1(2)(b), (c), (d), (e), (g), (h) and (3) of HB 40.

Section 2. Persons wishing to become instructor trainers, in addition to the requirements of subsection (1) of this section, shall:

- (1) Possess a high school diploma or GED certificate;
- (2) Have at least one (1) of the following valid firearms instructor certifications:
 - (a) National Rifle Association Personal Protection Instructor;
 - (b) National Rifle Association Pistol Marksmanship Instructor;
 - (c) Certification from a firearms instructor's course offered by a state or federal governmental agency; or
 - (d) A similar firearms instructor qualifying course, as determined by the Secretary of the Justice Cabinet or his designee.

Section 3. (1) Applicants shall agree to background check.

(2) An applicant may be disqualified from taking firearms instructor training, or have his instructor qualification revoked if the applicant:

- (a) Does not meet the requirements of HB 40 to possess a license to carry concealed deadly weapons;
- (b) Provides false or misleading information on the application; or
- (c) Has had a prior instructor qualification revoked by the department.

JOHN W. BIZZACK, Commissioner

E. DANIEL CHERRY, Secretary

APPROVED BY AGENCY: July 12, 1996

FILED WITH LRC: July 12, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 23, 1996 at 2 p.m. at the Department of Criminal Justice Training, Funderburk Building, Room 211, Eastern Kentucky University, Kit Carson Drive, Richmond, Kentucky 40475-3137. Individuals interested in attending this hearing shall notify this agency in writing by August 18, 1996 five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the date, the hearing may be cancelled. The hearing is open to the public. Any person who attends 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Bernie Thompson, Department of Criminal Justice Training, Funderburk Building, Kit Carson Drive, Richmond, Kentucky 40475-3137, (606) 622-1023.

REGULATORY IMPACT ANALYSIS

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Contact Person: Bernie Thompson

(1) Type and number of entities affected: Administrative regulation is expected to affect approximately 150-200 instructor trainers, 1500 instructors and 150,000-20,000 applicants.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from public comments received: No public comment received. Persons becoming firearms instructors will supplement their income to some degree.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from public comments received: No public comment received. This administrative regulation should have no impact on cost of doing business in any geographical area.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Applicants will fill out application form, sign waiver form and form acknowledging receipt of copies of certain Kentucky revised statutes. Permanent records to be maintained by DOJT.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Fees charged to applicants are expected to cover costs of: instructors, class materials, facilities and recordkeeping. This should be cost neutral.

1. First year: There will be start-up costs of \$100,000 which will be recovered through fees.

2. Continuing costs or savings: Fees will continue to cover cost of instructors, facilities, materials, and record keeping. Start-up cost of \$100,000 will also be recovered.

3. Additional factors increasing or decreasing costs: None have been identified. Costs should remain steady.

(b) Reporting and paperwork requirements: Applications, test results, waiver, and acknowledgment of receipt of KRS statutes will be maintained permanently by DOJT. Certificates of successful completion of course will be sent to applicants.

(4) Assessment of anticipated effect on state and local revenues: This program is expected to be self-sustaining and will have no effect on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fees from applicants are expected to support implementation and enforcement of this administrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Administrative regulation will be implemented statewide. No public comments have been received. Minimal economic impact is expected.

(b) Kentucky: Minor income will be generated for instructors who will likely teach the required curriculum to applicants on a part-time basis.

(7) Assessment of alternative methods; reasons why alternatives were rejected: These administrative regulations were mandated by HB 40. No other alternatives existed.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Public safety should benefit from applicants being required to be taught a specified curriculum on safe use of a weapon.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Could be detrimental only to degree that persons carrying concealed deadly weapons have no training in safety and use of force.

(c) If detrimental effect would result, explain detrimental effect: Safety would be reduced. Improper use of deadly weapon could result in liability suits.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? To a limited degree. Tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates. Disparate treatment of any persons or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The training program involves two "layers" of instructors. The expectation is to train 150-200 instructor trainers. They in turn will train approximately 1,500 instructors. The 1,500 will then train those applying for a license to carry a concealed deadly weapon. Instructor trainers will be required to have completed a certified firearms instructor course. Otherwise, all standards are the same.

KENTUCKY JUSTICE CABINET Department of Criminal Justice Training (New Administrative Regulation)

503 KAR 4:040. Required instructor training.

RELATES TO: HB 40

STATUTORY AUTHORITY: HB 40

NECESSITY AND FUNCTION: HB 40 stipulates that uniform administrative regulations be developed to certify and decertify firearm instructors teaching course authorized by HB 40. This administrative regulation describes the requirements and stipulates the minimum requirements of the instructor qualifying course.

Section 1. The training course to certify firearms instructors and instructor trainers shall include:

(1) Sixteen (16) hours of classroom instruction covering at least the following topics:

(a) By means of a videotape produced or approved by the department:

1. The requirements for obtaining a concealed deadly weapons license in Kentucky;

2. Laws relating to firearms as contained in KRS Chapters 237 and 527; and

3. Laws relating to the justifiable use of force as contained in KRS Chapter 503;

(b) The conduct of applicant training courses;

(c) Recordkeeping requirements of this administrative regulation;

(d) The basic nomenclature of handguns;

(e) The basic principles of marksmanship; and

(f) The safe handling of handguns.

(2) A classroom demonstration, during which the instructor candidate shall receive instruction on and demonstrate competency in the ability to prepare and deliver a classroom presentation using materials from the applicant curriculum.

(3) Range instruction and firing of live ammunition, during which the instructor candidate shall receive instruction on and demonstrate competency in the ability to:

(a) Handle and fire a handgun safely and accurately;

(b) Conduct a function test and safety inspection of common types of handguns;

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- (c) Clean common types of handguns; and
- (d) Supervise and conduct live firing exercises in a safe and efficient manner.

Section 2. To qualify as a certified firearms instructor or instructor trainer, instructor candidates shall achieve:

- (1) A minimum score of seventy (70) percent on a written examination covering the material taught during the classroom portion of the course;
- (2) A minimum score of eighty (80) percent on range firing of a handgun from the standing position while aiming at a B-21 PC silhouette target or an equivalent as approved by the department, with a minimum of:
 - (a) Ten (10) rounds from seven (7) yards; and
 - (b) Ten (10) rounds from fifteen (15) yards; and
- (3) A score of "passing" from the course instructor for demonstrating competency in each of the following:
 - (a) Supervising and conducting live fire;
 - (b) Cleaning and inspecting handguns; and
 - (c) Preparing and delivering the classroom lecture.

Section 3. Instructor candidates who fail to meet the minimum requirements of Section 2 of this administrative regulation may retake the examination, range work or classroom demonstration one (1) time without having to repeat the course.

Section 4. (1) Qualified firearms instructor and instructor trainer certificates shall be valid for three (3) years from date of issue.

(2) Qualified firearms instructors or instructor trainers may renew their certification by successfully completing a refresher course offered or approved by the department.

Section 5. (1) The fees for instructor trainer or refresher courses shall be \$100 per student.

(2) The fees for qualified instructor courses shall be no more than \$100 per student. The instructor trainer shall remit fifty (50) dollars per student to the department.

(3) Fees shall not be refunded to those who do not pass or otherwise fail to complete a course.

Section 6. (1) Course participants shall provide their own safe, functional handgun and factory-loaded ammunition.

(2) Prior to conducting range firing, the course instructor shall:

- (a) Inspect each applicant's firearm; and
- (b) Not allow the firing of a handgun which is not in sound mechanical condition or otherwise may pose a safety hazard.

JOHN W. BIZZACK, Commissioner

E. DANIEL CHERRY, Secretary

APPROVED BY AGENCY: July 12, 1996

FILED WITH LRC: July 12, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 23, 1996 at 2 p.m. at the Department of Criminal Justice Training, Funderburk Building, Room 211, Eastern Kentucky University, Kit Carson Drive, Richmond, Kentucky 40475-3137. Individuals interested in attending this hearing shall notify this agency in writing by August 18, 1996 five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the date, the hearing may be cancelled. The hearing is open to the public. Any person who attends 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Bernie Thompson, Department

of Criminal Justice Training, Funderburk Building, Kit Carson Drive, Richmond, Kentucky 40475-3137, (606) 622-1023.

REGULATORY IMPACT ANALYSIS

Contact Person: Bernie Thompson

(1) Type and number of entities affected: Administrative regulation is expected to affect approximately 150-200 instructor trainers, 1500 instructors and 150,000-20,000 applicants.

(2) Direct and Indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from public comments received: No public comment received. Persons becoming firearms instructors will supplement their income to some degree.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from public comments received: No public comment received. This administrative regulation should have no impact on cost of doing business in any geographical area.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Applicants will fill out application form, sign waiver form and form acknowledging receipt of copies of certain Kentucky revised statutes. Permanent records to be maintained by DOCJT.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Fees charged to applicants are expected to cover costs of: instructors, class materials, facilities and record keeping. This should be cost neutral.

1. First year: There will be start-up costs of \$100,000 which will be recovered through fees.

2. Continuing costs or savings: Fees will continue to cover cost of instructors, facilities, materials, and record keeping. Start-up cost of \$100,000 will also be recovered.

3. Additional factors increasing or decreasing costs: None have been identified. Costs should remain steady.

(b) Reporting and paperwork requirements: Applications, test results, waiver, and acknowledgment of receipt of KRS statutes will be maintained permanently by DOCJT. Certificates of successful completion of course will be sent to applicants.

(4) Assessment of anticipated effect on state and local revenues: This program is expected to be self-sustaining and will have no effect on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fees from applicants are expected to support implementation and enforcement of this administrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Administrative regulation will be implemented statewide. No public comments have been received. Minimal economic impact is expected.

(b) Kentucky: Minor income will be generated for instructors who will likely teach the required curriculum to applicants on a part-time basis.

(7) Assessment of alternative methods; reasons why alternatives were rejected: These administrative regulations were mandated by HB 40. No other alternatives existed.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Public safety should benefit from applicants being required to be taught a

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specified curriculum on safe use of a weapon.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Could be detrimental only to degree that persons carrying concealed deadly weapons have no training in safety and use of force.

(c) If detrimental effect would result, explain detrimental effect: Safety would be reduced. Improper use of deadly weapon could result in liability suits.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? To a limited degree. Tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates. Disparate treatment of any persons or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The training program involves two "layers" of instructors. The expectation is to train 150-200 instructor trainers. They in turn will train approximately 1,500 instructors. The 1,500 will then train those applying for a license to carry a concealed deadly weapon. Instructor trainers will be required to have completed a certified firearms instructor course. Otherwise, all standards are the same.

KENTUCKY JUSTICE CABINET Department of Criminal Justice Training (New Administrative Regulation)

503 KAR 4:050. Required content and conduct of the applicant training course.

RELATES TO: HB 40

STATUTORY AUTHORITY: HB 40

NECESSITY AND FUNCTION: HB 40 stipulates that uniform administrative regulations be developed to certify and decertify firearm instructors teaching course authorized by HB 40. This administrative regulation describes the procedures qualified firearms instructors shall use in teaching applicant training courses, the minimum age and other requirements for students taking, and the maximum fees for, applicant training courses.

Section 1. The applicant training course shall be the standardized training course furnished by the department and taught by a qualified firearms instructor, consisting of:

(1) Eight (8) hours of classroom instruction, covering at least the following topics:

(a) Handgun safety in the classroom, at home, on the firing range or while carrying the firearm;

(b) The basic principles of marksmanship; and

(c) Care and cleaning of handguns;

(d) By means of a videotape produced or approved by the department:

1. The requirements for obtaining a concealed deadly weapons license in Kentucky;

2. Laws relating to firearms as contained in KRS Chapters 237 and 527; and

3. Laws relating to the justifiable use of force as contained in KRS Chapter 503.

(2) Live firing exercises of sufficient duration for each applicant to fire a handgun:

(a) From a standing position;

(b) A minimum of twenty (20) rounds;

(c) At a distance from a B-21 silhouette target, or an equivalent as approved by the department, of seven (7) yards.

Section 2. The classroom portion of the course may be, at the qualified firearms instructor's discretion, taught in one (1) eight (8) hour block or divided into segments of not less than one (1) hour each.

Section 3. (1) Applicant training course shall not be open to persons who are less than twenty-one (21) years of age.

(2) Applicant training course students shall complete a course application form, which shall include a statement acknowledging receipt of copies of pertinent sections of KRS Chapters 237, 527 and 503 and a liability waiver.

(3) The Course Application Form, 1996, is incorporated by reference. This form may be obtained from the qualified firearms instructor at the time of the course.

Section 4. Qualified firearms instructors shall not discuss the content of the video tape or the content of KRS Chapters 237, 503 or 527 with students, either individually or as a class.

Section 5. At the conclusion of the classroom portion of the applicant training course, the qualified firearms instructor shall:

(1) Distribute a standard course examination to the students;

(2) Not leave the room in which the examination is being held while the examination is in progress; and

(3) Collect examination booklets and answer sheets from each student at the end of the examination period;

(4) Not grade the examinations in the presence of students;

(5) Not divulge an applicant's numeric score on the day of the examination, but may indicate whether an applicant passed or failed the examination.

Section 6. A person shall not:

(1) Make an unauthorized copy of the applicant training course examination, in whole or in part;

(2) Possess the applicant training course examination, or questions from the examination, unless authorized by the department; or

(3) Divulge the contents of applicant training course examination questions to another person.

Section 7. (1) Students shall provide their own safe, functional handgun and factory-loaded ammunition.

(2) Prior to conducting range firing, the certified firearms instructor shall:

(a) Inspect each applicant's firearm; and

(b) Not allow the firing of a handgun which is not in sound mechanical condition or otherwise may pose a safety hazard.

Section 8. Grades of "passing" shall not be given on range work to an applicant who:

(1) Does not follow the orders of the certified firearms instructor;

(2) In the judgment of the certified firearm instructor, handles a firearm in a manner that poses a danger to the applicant or to others; or

(3) Fails to hit the silhouette portion of the target with the majority of the twenty (20) rounds.

Section 9. Certified firearms instructors shall:

(1) Allow monitoring of their classes by officials of any certifying agency;

(2) Make all course records available upon demand to authorized personnel of the department; and

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(3) Not divulge course records except as authorized by the certifying agency.

Section 10. (1) Fees for applicant training courses shall not exceed seventy-five (75) dollars per student.

(2) Qualified firearms instructors shall collect the fee, and remit twenty-five (25) dollars of the fee to the department.

(3) Fees shall not be refunded to students who fail or otherwise do not complete the course.

Section 11. An applicant training course shall not have more than forty (40) students in the classroom portion or more than five (5) students per range officer engaged in range firing.

JOHN W. BIZZACK, Commissioner

E. DANIEL CHERRY, Secretary

APPROVED BY AGENCY: July 12, 1996

FILED WITH LRC: July 12, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 23, 1996 at 2 p.m. at the Department of Criminal Justice Training, Funderburk Building, Room 211, Eastern Kentucky University, Kit Carson Drive, Richmond, Kentucky 40475-3137. Individuals interested in attending this hearing shall notify this agency in writing by August 18, 1996 five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the date, the hearing may be cancelled. The hearing is open to the public. Any person who attends 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Bernie Thompson, Department of Criminal Justice Training, Funderburk Building, Kit Carson Drive, Richmond, Kentucky 40475-3137, (606) 622-1023.

REGULATORY IMPACT ANALYSIS

Contact Person: Bernie Thompson

(1) Type and number of entities affected: Administrative regulation is expected to affect approximately 150-200 instructor trainers, 1500 instructors and 150,000-20,000 applicants.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from public comments received: No public comment received. Persons becoming firearms instructors will supplement their income to some degree.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from public comments received: No public comment received. This administrative regulation should have no impact on cost of doing business in any geographical area.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Applicants will fill out application form, sign waiver form and form acknowledging receipt of copies of certain Kentucky revised statutes. Permanent records to be maintained by DOCJT.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Fees charged to applicants are expected to cover costs of: instructors, class materials, facilities and record keeping. This should be cost neutral.

1. First year: There will be start-up costs of \$100,000 which will

be recovered through fees.

2. Continuing costs or savings: Fees will continue to cover cost of instructors, facilities, materials, and record keeping. Start-up cost of \$100,000 will also be recovered.

3. Additional factors increasing or decreasing costs: None have been identified. Costs should remain steady.

(b) Reporting and paperwork requirements: Applications, test results, waiver, and acknowledgment of receipt of KRS statutes will be maintained permanently by DOCJT. Certificates of successful completion of course will be sent to applicants.

(4) Assessment of anticipated effect on state and local revenues: This program is expected to be self-sustaining and will have no effect on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fees from applicants are expected to support implementation and enforcement of this administrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Administrative regulation will be implemented statewide. No public comments have been received. Minimal economic impact is expected.

(b) Kentucky: Minor income will be generated for instructors who will likely teach the required curriculum to applicants on a part-time basis.

(7) Assessment of alternative methods; reasons why alternatives were rejected: These administrative regulations were mandated by HB 40. No other alternatives existed.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Public safety should benefit from applicants being required to be taught a specified curriculum on safe use of a weapon.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Could be detrimental only to degree that persons carrying concealed deadly weapons have no training in safety and use of force.

(c) If detrimental effect would result, explain detrimental effect: Safety would be reduced. Improper use of deadly weapon could result in liability suits.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? To a limited degree. Tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates. Disparate treatment of any persons or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The training program involves two "layers" of instructors. The expectation is to train 150-200 instructor trainers. They in turn will train approximately 1,500 instructors. The 1,500 will then train those applying for a license to carry a concealed deadly weapon. Instructor trainers will be required to have completed a certified firearms instructor course. Otherwise, all standards are the same.

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KENTUCKY JUSTICE CABINET Department of Criminal Justice Training (New Administrative Regulation)

503 KAR 4:060. Reporting test scores and issuing certificates of completion.

RELATES TO: HB 40

STATUTORY AUTHORITY: HB 40

NECESSITY AND FUNCTION: HB 40 stipulates that uniform administrative regulations be developed to certify and decertify firearm instructors teaching course authorized by HB 40. This administrative regulation stipulates how test scores from applicant training courses are to be reported, the minimum acceptable scores, and the issuance of certificates of completion.

Section 1. Within three (3) working days after the completion of the course, the certified firearms instructor shall:

(1) Grade the examinations; and

(2) Mail to the department:

(a) The completed course application form, showing the student's score on the written examination and indicating whether the student passed or failed the range work; and

(b) The graded examinations.

Section 2. Within fifteen (15) days after receipt of the material described in Section 1 of this administrative regulation, the department shall mail to the applicant:

(1) A certificate of successful course completion; or

(2) Notification that the applicant has failed the course and will not be certified.

Section 3. A student shall be issued a certificate of completion if he:

(1) Answers at least seventy (70) percent of the written examination questions correctly; and

(2) Achieves a grade of "passing" on the range work.

Section 4. (1) Students who score below seventy (70) percent on the written examination may retake the examination one (1) time without having to retake the course.

(2) Students who do not achieve a grade of "passing" on the range work may repeat the range work one (1) time without having to retake the course.

(3) Notices of failure will include information on whether the student failed the written exam, the range firing, or both.

JOHN W. BIZZACK, Commissioner

E. DANIEL CHERRY, Secretary

APPROVED BY AGENCY: July 12, 1996

FILED WITH LRC: July 12, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 23, 1996 at 2 p.m. at the Department of Criminal Justice Training, Funderburk Building, Room 211, Eastern Kentucky University, Kit Carson Drive, Richmond, Kentucky 40475-3137. Individuals interested in attending this hearing shall notify this agency in writing by August 18, 1996 five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the date, the hearing may be cancelled. The hearing is open to the public. Any person who attends 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Bernie Thompson, Department

of Criminal Justice Training, Funderburk Building, Kit Carson Drive, Richmond, Kentucky 40475-3137, (606) 622-1023.

REGULATORY IMPACT ANALYSIS

Contact Person: Bernie Thompson

(1) Type and number of entities affected: Administrative regulation is expected to affect approximately 150-200 instructor trainers, 1500 instructors and 150,000-20,000 applicants.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from public comments received: No public comment received. Persons becoming firearms instructors will supplement their income to some degree.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from public comments received: No public comment received. This administrative regulation should have no impact on cost of doing business in any geographical area.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Applicants will fill out application form, sign waiver form and form acknowledging receipt of copies of certain Kentucky revised statutes. Permanent records to be maintained by DOCJT.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Fees charged to applicants are expected to cover costs of: instructors, class materials, facilities and record keeping. This should be cost neutral.

1. First year: There will be start-up costs of \$100,000 which will be recovered through fees.

2. Continuing costs or savings: Fees will continue to cover cost of instructors, facilities, materials, and record keeping. Start-up cost of \$100,000 will also be recovered.

3. Additional factors increasing or decreasing costs: None have been identified. Costs should remain steady.

(b) Reporting and paperwork requirements: Applications, test results, waiver, and acknowledgment of receipt of KRS statutes will be maintained permanently by DOCJT. Certificates of successful completion of course will be sent to applicants.

(4) Assessment of anticipated effect on state and local revenues: This program is expected to be self-sustaining and will have no effect on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fees from applicants are expected to support implementation and enforcement of this administrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Administrative regulation will be implemented statewide. No public comments have been received. Minimal economic impact is expected.

(b) Kentucky: Minor income will be generated for instructors who will likely teach the required curriculum to applicants on a part-time basis.

(7) Assessment of alternative methods; reasons why alternatives were rejected: These administrative regulations were mandated by HB 40. No other alternatives existed.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Public safety should benefit from applicants being required to be taught a

specified curriculum on safe use of a weapon.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Could be detrimental only to degree that persons carrying concealed deadly weapons have no training in safety and use of force.

(c) If detrimental effect would result, explain detrimental effect: Safety would be reduced. Improper use of deadly weapon could result in liability suits.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? To a limited degree. Tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates. Disparate treatment of any persons or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The training program involves two "layers" of instructors. The expectation is to train 150-200 instructor trainers. They in turn will train approximately 1,500 instructors. The 1,500 will then train those applying for a license to carry a concealed deadly weapon. Instructor trainers will be required to have completed a certified firearms instructor course. Otherwise, all standards are the same.

**KENTUCKY JUSTICE CABINET
Department of Criminal Justice Training
(New Administrative Regulation)**

503 KAR 4:070. Revocation of instructor certification and appeal process.

RELATES TO: HB 40

STATUTORY AUTHORITY: HB 40

NECESSITY AND FUNCTION: HB 40 stipulates that uniform administrative regulations be developed to certify and decertify firearms instructors teaching course authorized by HB 40. This administrative regulation specifies the conditions for which a qualified firearms instructor may lose his certification and the process for appealing decertification.

Section 1. The department shall revoke the instructor or instructor trainer certificate of a person who:

(1) Violates a provision of 503 KAR 4:010 through 503 KAR 4:060.

(2) Commits an act which would cause the person to become ineligible for a license to carry concealed deadly weapons in Kentucky.

Section 2. Persons may appeal the revocation of certification by requesting a hearing before the Secretary of the Justice Cabinet or his designee.

Section 3. Appeal hearings shall be conducted under the provisions of KRS Chapter 13B.

JOHN W. BIZZACK, Commissioner

E. DANIEL CHERRY, Secretary

APPROVED BY AGENCY: July 12, 1996

FILED WITH LRC: July 12, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative

regulation shall be held on August 23, 1996 at 2 p.m. at the Department of Criminal Justice Training, Funderburk Building, Room 211, Eastern Kentucky University, Kit Carson Drive, Richmond, Kentucky 40475-3137. Individuals interested in attending this hearing shall notify this agency in writing by August 18, 1996 five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the date, the hearing may be cancelled. The hearing is open to the public. Any person who attends 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Bernie Thompson, Department of Criminal Justice Training, Funderburk Building, Kit Carson Drive, Richmond, Kentucky 40475-3137, (606) 622-1023.

REGULATORY IMPACT ANALYSIS

Contact Person: Bernie Thompson

(1) Type and number of entities affected: Administrative regulation is expected to affect approximately 150-200 instructor trainers, 1500 instructors and 150,000-20,000 applicants.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from public comments received: No public comment received. Persons becoming firearms instructors will supplement their income to some degree.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from public comments received: No public comment received. This administrative regulation should have no impact on cost of doing business in any geographical area.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Applicants will fill out application form, sign waiver form and form acknowledging receipt of copies of certain Kentucky revised statutes. Permanent records to be maintained by DOCJT.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Fees charged to applicants are expected to cover costs of: instructors, class materials, facilities and record keeping. This should be cost neutral.

1. First year: There will be start-up costs of \$100,000 which will be recovered through fees.

2. Continuing costs or savings: Fees will continue to cover cost of instructors, facilities, materials, and record keeping. Start-up cost of \$100,000 will also be recovered.

3. Additional factors increasing or decreasing costs: None have been identified. Costs should remain steady.

(b) Reporting and paperwork requirements: Applications, test results, waiver, and acknowledgment of receipt of KRS statutes will be maintained permanently by DOCJT. Certificates of successful completion of course will be sent to applicants.

(4) Assessment of anticipated effect on state and local revenues: This program is expected to be self-sustaining and will have no effect on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fees from applicants are expected to support implementation and enforcement of this administrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising

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from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Administrative regulation will be implemented statewide. No public comments have been received. Minimal economic impact is expected.

(b) Kentucky: Minor income will be generated for instructors who will likely teach the required curriculum to applicants on a part-time basis.

(7) Assessment of alternative methods; reasons why alternatives were rejected: These administrative regulations were mandated by HB 40. No other alternatives existed.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Public safety should benefit from applicants being required to be taught a specified curriculum on safe use of a weapon.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Could be detrimental only to degree that persons carrying concealed deadly weapons have no training in safety and use of force.

(c) If detrimental effect would result, explain detrimental effect: Safety would be reduced. Improper use of deadly weapon could result in liability suits.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? To a limited degree. Tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates. Disparate treatment of any persons or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The training program involves two "layers" of instructors. The expectation is to train 150-200 instructor trainers. They in turn will train approximately 1,500 instructors. The 1,500 will then train those applying for a license to carry a concealed deadly weapon. Instructor trainers will be required to have completed a certified firearms instructor course. Otherwise, all standards are the same.

EDUCATION, ARTS, AND HUMANITIES CABINET

Education Professional Standards Board

(New Administrative Regulation)

704 KAR 20:052. Repeal of 704 KAR 20:050.

RELATES TO: KRS 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY AND FUNCTION: The provisions of 704 KAR 20:050, Time limits for applying for certification, are in conflict with those identified in 704 KAR 20:670, Kentucky teaching certificates. Accordingly, 704 KAR 20:050 should be repealed.

Section 1. 704 KAR 20:050, Time limits for applying for certification, is hereby repealed.

DANIEL GREENE, Chair

APPROVED BY AGENCY: June 24, 1996

FILED WITH LRC: June 28, 1996 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on August 30, 1996, at 10 a.m., in the First

Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 25, 1996, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact Person: Dr. Betty Lindsey, Office of Teacher Education and Certification, 1024 Capital Center Drive, Frankfort, Kentucky 40601, (502) 573-4606.

REGULATORY IMPACT ANALYSIS

Contact Person: Ronda Tamme

(1) Type and number of entities affected: All persons applying for Kentucky teaching certification beginning January 1, 1998.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No additional costs.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Costs associated with the dissemination of information to local districts, colleges and universities.

2. Second and subsequent years: None anticipated.

(3) Effects on promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Costs associated with the dissemination of information.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: No effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Not applicable.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Retention of this regulation will create a contradiction with 704 KAR 20:670.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical areas in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 704 KAR 20:670, Kentucky teaching certificates.

(a) Necessity of proposed regulation if in conflict: 704 KAR 20:670 establishes the new streamlined teaching certificate areas and

timelines for applying for certificates.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No, the timelines for application under 704 KAR 20:670 are definitive and supersede 704 KAR 20:050.

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No, all applicants will be expected to follow the regulation relating to Kentucky teaching certification.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals
(New Administrative Regulation)

805 KAR 7:080. Training, certification, and annual retraining of mine emergency technicians.

RELATES TO: KRS 351.127

STATUTORY AUTHORITY: KRS 351.070(13), 351.127

NECESSITY AND FUNCTION: KRS 351.127 requires that a certified emergency medical technician or mine emergency technician be employed at every coal mine whose employees are engaged in the extraction, production, or preparation of coal. Persons employed as mine emergency technicians shall be trained, certified, and retrained in accordance with standards established in this administrative regulation.

Section 1. Definitions. The following definitions apply to this administrative regulation:

(1) "Current", as applied to training and its certification, means the present status of training, as certified by the agency which reviews or attests to it.

(2) "Emergency medical technician (EMT)" means a person certified by the Cabinet for Human Resources who is trained to provide immediate emergency medical care and intervention to stabilize a patient's condition at the scene of an emergency and enroute to definitive medical care.

(3) "Mine emergency technician (MET)" means a person certified by the Department of Mines and Minerals who is trained to provide immediate emergency medical care to an injured person at the mine site.

Section 2. MET Certification Requirements. (1) Each applicant for certification as a MET shall:

(a) Hold a surface or underground miner's certification in the Commonwealth of Kentucky;

(b) Successfully complete the standard program of training and education and a series of written and practical skills examinations prescribed by the department;

(c) Hold a current course completion card in adult foreign body airway obstruction and adult one (1) and two (2) rescuer CPR;

(d) Be eighteen (18) years of age or older; and

(e) Understand and be able to read, speak, and write the English language.

(2) Upon the effective date of this administrative regulation and at all times thereafter, a person certified as an emergency medical technician who is also a Kentucky certified miner and whose CPR course completion card is current may, upon application, be certified as a mine emergency technician.

Section 3. MET Training Course Requirements. (1) Upon the effective date of this administrative regulation, the training course for certification as a MET shall include instruction in the materials set out in the BRADY Basic First Response text, 1st edition, chapters 1-23 and 25-29, which material is incorporated herein by reference. Copies of the material incorporated by reference may be obtained from The

BRADY Company, Simon & Schuster Education Group, One Lake Street, Upper Saddle River, New Jersey 07458, (800) 638-0220; it is also available for public inspection at the Department of Mines and Minerals, Administration Building, 3572 Iron Works Pike, Lexington, Kentucky, Monday through Friday, from 8 a.m. until 4:30 p.m.

(2) The training course shall also:

(a) Be not less than forty (40) hours in duration;

(b) Be taught by an instructor certified by the department;

(c) Include equipment, texts, audio-visual and other materials deemed appropriate by the department;

(d) Be limited to thirty (30) students per instructor; and

(e) Be conducted in an adequate training facility.

Section 4. MET Certification Examination. (1) At the time of taking the MET certification examination, the MET applicant shall provide verification on a Federal Form 5000-23 that he has successfully completed the standard program of MET training and education prescribed by the department.

(2) The Federal Form 5000-23 shall be signed by the MET applicant, be embossed with the MET instructor certification number and signed by the MET instructor who administered the MET course to the applicant.

(3) The MET certification examination shall be administered by the department, which shall prescribe the format and content of that examination, which shall consist of two (2) parts:

(a) Written.

1. An absolute overall grade of not less than eighty (80) percent shall be required to pass the written examination.

2. If the applicant for certification fails to pass the certification examination, he shall be permitted one (1) opportunity to retake the written examination, which shall be taken within sixty (60) days of the initial examination date.

3. If the applicant for certification again fails to pass the written examination, he shall be required to retake the entire MET training course before being eligible for reexamination.

(b) Practical.

1. The applicant shall pass, by demonstrating proficiency, the final practical examination, which shall be divided into required stations in which one (1) or more skills are tested. Certain stations shall be designated as mandatory. Other stations shall be designated as wild card stations in which more than one (1) skill may be tested. The applicant shall randomly draw the skills on which he is to be tested from the wild card stations at the time of the examination.

2. If he fails to pass all required stations, he shall be permitted one (1) opportunity to retake the required stations which he failed to pass; the retake shall be taken within sixty (60) days of the initial examination date.

3. If he again fails to pass the required stations, he shall be required to retake the entire MET training course before being eligible for reexamination.

Section 5. Recertification Continuing Education Requirements. (1) During his period of certification, a MET shall earn at least eight (8) continuing education/retraining hours, with not less than half being devoted to practical skills in a structured instructional setting.

(2) Continuing education and retraining courses for mine emergency technicians shall be taught by certified MET instructors.

(3) A MET shall maintain evidence of a current course completion card in adult foreign body airway obstruction and adult one (1) and two (2) rescuer CPR and demonstrate to the MET instructor at the time of his MET recertification training that his CPR course completion card is current.

(4) An applicant for recertification shall receive credit for completion of continuing education/retraining hours in subjects required by the department's MET curriculum.

(5) Each subject or training course for which credit is claimed shall be countersigned by the MET instructor of the subject or course.

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(6) The applicant for recertification shall submit evidence of successful completion of instruction in at least four (4) different subject areas of the approved MET curriculum, with a maximum of two (2) hours per subject area.

(7) The MET shall submit to a district office of the department, a record of his continuing education on a Mine Emergency Technician Recertification Form EF-16, a copy of which is attached, which shall be signed by the MET, be embossed with the MET instructor certification number and signed by the MET instructor who administered the continuing education claimed for purposes of recertification.

(8) The MET shall maintain evidence of his MET recertification, on Form EF-16, at the mine site.

Section 6. Expiration of Certification. (1) A MET certification shall expire one (1) year from the last day of the month in which the certification was issued unless the person holding the MET certification satisfies the recertification continuing education requirements set out in Section 5 of this administrative regulation.

(2) Upon the certification expiration date, the holder of that certification may no longer function in the capacity of a mine emergency technician.

Section 7. Renewal of Certification. (1) Within one (1) year from the certification expiration date, a person may renew his certification as a MET by successfully completing eight (8) hours of MET retraining and reeducation classes, whose content shall be established by the department.

(2) Beyond one (1) year from the certification expiration date, the holder of that certification shall be required to successfully complete the initial MET certification examination requirements set out in Section 3 of this administrative regulation.

Section 8. Designation of a MET. (1) A person designated by the licensee to function as a MET in an underground coal mine shall:

(a) Hold an underground miner's certification in the Commonwealth of Kentucky;

(b) Hold a mine emergency technician certification from the department; and

(c) Maintain verification of his MET certification at the mine site.

(2) A person designated by the licensee to function as a MET at a surface coal mine shall:

(a) Hold a surface miner's certification in the Commonwealth of Kentucky;

(b) Hold a mine emergency technician certification from the department; and

(c) Maintain verification of his MET certification at the mine site.

(3) A certified MET instructor designated by the licensee to function as a mine emergency technician shall:

(a) Meet the requirements of subsections (1)(a) or (2)(a) of this section;

(b) Maintain verification of his MET certification at the mine site; and either

(c) Teach an eight (8) hour MET retraining class during his period of certification; or

(d) Meet the recertification continuing education requirements established in Section 5 of this administrative regulation.

(4) Certified mine emergency technicians shall function within the scope of their training and expertise and shall not be held liable for any acts performed by them in their capacity as mine emergency technicians so long as such acts are reasonable in the situations within which they are performed.

Section 9. MET Instructor Certification Requirements. MET instructors shall:

(1) Hold a mine instructor certification issued by the department;

(2) Hold a current instructor card to teach adult foreign body

airway obstruction and adult one (1) and two (2) rescuer CPR; and either

(3) Pass the MET certification examination administered by the department; or

(4) Be an EMT instructor who is also qualified in accordance with subsections (1) and (2) of this section.

Section 10. Responsibilities of the MET Instructor. (1) The MET instructor shall:

(a) Utilize equipment, texts, audio-visual and other materials deemed appropriate by the department;

(b) Notify the district office of the department prior to his commencement of MET classes;

(c) Verify on a Federal Form 5000-23 that the MET applicant has successfully completed the standard MET program of training and education prescribed by the department; and

(d) Verify on a MET Recertification Form EF-16 that the MET has successfully completed each subject or training course for which credit is approved.

(2) Certified MET instructors shall function within the scope of their training and expertise and shall not be held liable for any acts performed by them in their capacity as mine emergency technician instructors so long as such acts are reasonable in the situations within which they are performed.

Section 11. Denial, Revocation, and Suspension of MET Certification. (1) The Mining Board may revoke, suspend, or probate the MET certification or MET instructor certification of a person who:

(a) Acts beyond the scope of his mine emergency technician or instructor training; or

(b) The board determines, based on allegations substantiated by the department, has responded or acted inappropriately in his capacity as a mine emergency technician or MET instructor.

(2) All actions taken by the board regarding the revocation, suspension, or probation of a MET certification or MET instructor certification shall be so taken in accordance with KRS 352.390.

LAURA M. DOUGLAS, Secretary

JOHN L. FRANKLIN, Commissioner

APPROVED BY AGENCY: June 9, 1996

FILED WITH LRC: July 12, 1996 at 2 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on Thursday, August 29, 1996, at 10 a.m., prevailing local time, in the first floor conference room of the Department of Mines and Minerals, Administration Building, 3572 Iron Works Pike, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 24, 1996, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing will be canceled. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed regulation to the contact person.

CONTACT PERSON: Eugene D. Attkisson, Kentucky Department of Mines and Minerals, Post Office Box 14080, Lexington, Kentucky 40512, Phone: (606) 246-2026, Fax: (606) 246-2038.

REGULATORY IMPACT ANALYSIS

Contact Person: Eugene D. Attkisson

(1) Type and number of entities affected: This proposed administrative regulation will apply to all of the underground and surface coal mines in the Commonwealth licensed by this agency. An estimated 950 mine licenses will be issued in 1996.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in

which the administrative regulation will be implemented, to the extent available from the public comments received. Although no comments were received following the publication of the Notice of Intent to Promulgate an Administrative Regulation, this agency anticipates no direct or indirect costs or savings on the cost of living and employment in the Commonwealth as a result of implementing this proposed administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. The training, certification, and annual retraining requirements for a MET (mine emergency technician) shall focus on mine-related medical emergencies, as opposed to the broader training curriculum for an EMT (emergency medical technician.) The initial MET certification training will be approximately 1/3 (J) the number of hours required for initial EMT training, which will result in a savings in the cost of doing business for the licensee of the coal mine.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Providing the licensee the opportunity to meet the requirements of KRS 351.127 by employing a MET rather than an EMT could result in a cost savings to the coal licensees in the Commonwealth, as indicated in (2)(b), above.

2. Second and subsequent years: The cost of the 8 hour annual retraining will be significantly less than the cost of the initial MET training, and also less than the 20 hours annual retraining required for an EMT.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The initial cost involved in the training and certification of MET's and MET instructors will be the greatest during 1997, the first year the law is effective; however, our current staff of mine instructors will carry out this training function at no additional cost to the agency. With the option of employing a MET to satisfy the requirements of KRS 351.127, the demand for EMT training and retraining, which the department currently provides, is predicted to significantly decrease, thereby generating additional savings.

2. Continuing costs or savings: The cost will decrease the second and subsequent years because the agency will have certified MET instructors in the private sector and the majority of the MET training will be the 8 hour annual retraining, rather than the initial 40 hour MET training.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Reporting requirements of the proposed administrative regulation will be minimal. The department will administer the MET certification examination and the person designated by the licensee to function as the MET shall maintain verification of his MET certification at the mine site. This agency's mine safety analysts will monitor the required MET certification documentation on a routine basis during visits to a mine.

(4) Assessment of anticipated effect on state and local revenues: The proposed administrative regulation has no effect on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The department's current staff of mine instructors, whose positions are funded with General Fund dollars, will be responsible for administering the MET training and certification program. Implementing and enforcing the proposed administrative regulation will require no additional funding.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky: No comments were received following the

publication of the Notice of Intent to Promulgate an Administrative Regulation; however, the proposed administrative regulation will have no economic impact on the Commonwealth of Kentucky.

(7) Assessment of alternative methods; reason why alternatives were rejected: The alternative to the enactment of this proposed administrative regulation would be to continue to require each coal mine to employ an EMT whose initial training is more extensive, 120, but not mine-specific. As indicated above, this agency also believes that the proposed administrative regulation will create the potential for licensee savings of time and money through the implementation of the MET program, while concurrently preserving coal mine safety.

(8) Assessment of expected benefits: The proposed administrative regulation will enhance voluntary compliance with KRS 351.127 by providing the licensee of the coal mine the flexibility of hiring an EMT or a MET. Increased compliance will ultimately enhance the immediate emergency medical care available to injured underground and surface coal miners.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The ability of a coal mine to provide immediate emergency medical care to an injured person at the mine site shall be significantly improved by requiring that an EMT or MET be employed at every coal mine whose employees are engaged in the extraction, production, or preparation of coal.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes, there is a potential detrimental effect if this proposed administrative regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect: The ability of a coal mine to provide immediate emergency medical care to an injured person at the mine site may be significantly hampered if the proposed administrative regulation is not implemented, because the training requirements of EMT's are continually increasing; consequently, the pool of EMT's is decreasing.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no identified statute, administrative regulation or government policy which is in conflict, overlaps, or duplicates the proposed administrative regulation.

(a) Necessity of proposed regulation if in conflict: The proposed administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: The Mining Board approved this proposed administrative regulation and representatives of the coal mining industry have also expressed support for it; however, no comments were received following the publication of the Notice of Intent to Promulgate an Administrative Regulation.

(11) TIERING: Is tiering applied? Yes. Tiering is applied because this proposed administrative regulation provides the licensee of the coal mine the option of employing an EMT or a MET, whose standards of training and certification are different from one another, to meet the requirements of KRS 351.127.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Health Systems Development
(New Administrative Regulation)

902 KAR 14:082. Class II ground ambulance providers.

RELATES TO: KRS 211.950 to 211.956, 216B.010 to 216B.130, 216B.990(1)(2)

STATUTORY AUTHORITY: KRS 211.952, 216B.042, EO 96-862, 1996 Ky. Acts ch. 233

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NECESSITY AND FUNCTION: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 216B.042 requires the Cabinet for Health Services to regulate health facilities and health services. KRS 211.952(2)(c) requires the Cabinet for Health Services to promulgate administrative regulations for licensing, inspecting, and regulating ambulance providers. This administrative regulation provides for the minimum licensing requirements for Class II ground ambulance providers.

Section 1. Definitions. (1) "Basic life support (BLS)" means an ambulance provider which:

(a) Utilizes at least two (2) emergency medical personnel who are certified or licensed to provide prehospital medical care such as:

1. First aid;
2. Cardiopulmonary resuscitation;
3. Airway management;
4. Cervical spine control;
5. Breathing assistance;
6. Hemorrhage control; and
7. Basic patient movement procedures;

(b) Meets the requirements established in Sections 1 through 6 of this administrative regulation; and

(c) Is licensed by the cabinet to provide basic life support treatment and transportation on a scheduled basis.

(2) "Continuing education" means the provision of information or training within the scope of an individual's level of certification.

(3) "CPR" means cardiopulmonary resuscitation as conforming to the basic rescuer course of the American Heart Association; the National Safety Council; or the basic life support professional rescuer course of the American Red Cross, which shall include one (1) and two (2) person CPR, airway obstruction, and airway adjuncts for adults, children, and infants.

(4) "Dispatch center" means the location where incoming calls are initially received requesting an ambulance.

(5) "Emergency medical technician (EMT)" means a person certified pursuant to 902 KAR 13:010 through 13:100.

(6) "Emergency medical technician-first responder" means a person certified pursuant to 902 KAR 13:110.

(7) "Employee" means ambulance provider medical personnel who may be paid or volunteer, full time or part time.

(8) "Interfacility care" means BLS nonemergency health care provided to a patient during ambulance transportation between two (2) health care facilities.

(9) "Licensing agency" means the Cabinet for Health Services, Department for Public Health.

(10) "Provider" means a Class II ground ambulance provider as defined in KRS 211.950(2), and KRS 211.952(2)(c)3.

Section 2. Class II Ground Ambulance Licensing Requirements.

(1) The following licensing requirements shall apply to Class II ground ambulance providers:

(a) A person shall not provide, advertise, or profess to engage in the provision of Class II medical care or transportation that originates in Kentucky without having first obtained a certificate of need and a license from the cabinet. An ambulance provider which falls under the provisions of KRS 211.952 to 211.956, as amended by 1996 Ky. Acts ch. 233, Section 7 may apply for a license from the cabinet without first obtaining an additional certificate of need;

(b) An ambulance provider shall comply with local, state, and federal statutes and regulations.

(c) The license shall be displayed in a prominent place at the service base station. The following information shall be included on the license:

1. Identity and location of the base station;
2. Number and location of substations, if any, to be operated by

the licensee;

3. Designation of the specific geographic area to be served by the licensee. The provider shall not be precluded from responding to calls outside of its geographic service area when providing:

- a. Mutual aid;
- b. Disaster assistance;
- c. Nonemergency transfers from damaged or closed health facilities; or

d. Interfacility care to residents of its service area, who are patients in facilities outside of its service area, for the purpose of returning the patients to their home service area; and

4. Designation of the number of ambulances to be operated by the provider;

(d) Each Class II ambulance licensed shall be staffed and equipped according to the requirements of this administrative regulation.

(e) Each ambulance provider shall provide the licensing agency with the serial number and license tag number of each ambulance licensed.

(f) The licensee shall:

1. Notify the licensing agency of any change in the number, type, or use of the ambulances to be operated; and

2. Meet the following requirements:

a. An ambulance shall not be operated until after the licensing agency has been notified and has verified, through a physical inspection, that it meets the requirements of this administrative regulation. If the ambulance represents an expansion of service (e.g., an increase in the number of ambulances), the licensing agency shall verify that a certificate of need has been granted prior to the inspection; and

b. The licensing agency shall be notified, on the next licensing agency business day, of the disposition of any prior approved ambulance operated by the ambulance provider (i.e., discontinued from service, change in use by the same ownership, or sale to another identified licensed ambulance provider).

(g) The licensing agency procedures shall not preclude the ambulance provider from utilizing a replacement ambulance on a temporary basis if a previously approved ambulance is out of service for maintenance. The following requirements shall apply:

1. The licensing agency shall be immediately notified (or on the next business day) by phone of the need for an ambulance provider to operate a temporary replacement unit. Within five (5) days, the ambulance provider shall send the licensing agency:

a. Written notice of the make, model, license number, and vehicle identification number; and

b. Assurances that the temporary replacement ambulance meets the requirements of this administrative regulation;

2. A temporary replacement ambulance shall not shall not be utilized for more than thirty (30) days unless the licensing agency has verified, through a physical inspection, that it meets the requirements of this administrative regulation.

3. If the ambulance provider plans to utilize the replacement ambulance for more than thirty (30) days, the provider shall notify the licensing agency of the anticipated length of time the replacement will be in use; and

4. The licensing agency shall be notified if the replaced unit is back in service.

(h) The licensing agency shall maintain identifying records on all ambulances according to established procedures.

(2) A licensed Class II provider shall have on file proof of professional and vehicular liability insurance.

(3) The following situations shall be exempt from the provisions of this administrative regulation:

(a) First aid or transportation provided in accordance with KRS 216B.020(2)(f);

(b) A vehicle serving as an ambulance during a major catastrophe;

(c) An ambulance operated by the United States government; and

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(d) An ambulance from an out-of-state licensed ambulance provider making a nonemergency run originating from a Kentucky facility for the purpose of returning a patient who is not a Kentucky resident to his state of residence.

Section 3. Class II Management Requirements. A Class II ground ambulance provider shall:

(1) Establish lines of authority (i.e., an organizational chart) to include the designation of:

(a) An administrator responsible for assuring compliance with this administrative regulation during the daily operation of the service; and
(b) A designee who shall serve if necessary in the absence of the administrator.

(2) Maintain adequate records and reports at the ambulance service base station to be made available for review as deemed necessary by the cabinet, including:

(a) An original, microfilm, electronic equivalent as authorized under KRS 216B.410(1), or similar copy procedure of EMS run form, EHS-8A "Kentucky Emergency Medical Service Ambulance Run Report", for all runs originating in Kentucky.

1. Copies of completed run report forms shall be kept as required by KRS 216B.410(1) and guidelines established by the licensing agency in a manner of confidentiality and safekeeping for a minimum of five (5) years from the date on which the service was rendered, or in the case of a minor, until five (5) years after the minor reaches eighteen (18) years of age; and

2. The third copy of the run form, or an electronic equivalent, shall be forwarded to the cabinet within thirty (30) days following the end of the month in which the run occurred.

(b) Personnel files on each ambulance driver and attendant shall be maintained for:

1. A minimum of five (5) years, or longer if specified in local government archives approved schedules, following termination or retirement from employment; or

2. Five (5) years following the demise of the employee.

(c) Individual ambulance driver and attendant personnel files shall contain evidence of:

1. Training;

2. Experience;

3. Current credentials including proof of CPR certification, or EMT or paramedic certification with corresponding numbers and expiration dates, or nursing or physician license;

4. Current and valid driver's license;

5. A preemployment criminal and Department of Transportation driver's records check for each individual added to the service;

6. Health records to include:

a. Written evidence of a preemployment health assessment having been conducted by a physician or a licensed advanced registered nurse practitioner (ARNP) stating the employee is capable of performing assigned job duties; and

b. Health records which meet the requirements of KRS 216B.410(3).

(3) Maintain and follow written administrative, personnel, medical, and other operational policies and procedures that are reviewed on an annual basis by the ambulance provider in order to assess their effectiveness. The policies and procedures shall be developed to include the following areas:

(a) Organizational structure, staffing, and allocation of responsibility and accountability;

(b) Ambulance service mutual aid agreements and agreements with other ambulance providers;

(c) Personnel performance guidelines; and

(d) A plan to assure that a continuing education program shall be provided for its staff. The program shall include:

1. Evidence of continuing education for staff regarding acquired immune deficiency syndrome (AIDS) and infection control, including the handling of infectious waste in accordance with Centers for

Disease Control guidelines.

2. A plan for response to, and the protection and decontamination of, the patient, ambulance, equipment, and staff if called upon to transport a patient exposed to hazardous materials;

3. A plan for assessing all other staff continuing education needs, with a coordinated development of methods to meet those needs; and

4. The maintenance of training rosters or other written records to support continuing education conducted by, or at the request of, the licensee.

(e) A plan for the quality assessment of patient care including a periodic review of ambulance run report forms, and evaluation of staff performance related to patient care.

(f) Policies and procedures concerning:

1. Vehicle maintenance;

2. Standard operating procedures (SOPS);

3. Patient protocols;

4. Ambulance response;

5. Transport limitations; and

6. Patient destination.

Section 4. Class II Operating Requirements. (1) A Class II ambulance provider shall provide transportation on a twenty four (24) hour, seven (7) days a week basis. This provision may be met through a call system or by a written mutual aid agreement with another Kentucky licensed ambulance provider.

(2) For the purpose of assisting the Class II provider in situations where the medical needs of the patient exceed the scope and authority of a Class II provider, the Class II provider shall have a mutual aid agreement with a Class I ambulance provider which serves all or part of the same service area of the Class II provider. The agreement may also include other circumstances in which each provider may be asked to assist the other on an occasional basis within the scope and authority of each provider's license to meet the needs of the service area.

(3) Ambulances used in the provision of Class II ambulance services shall:

(a) Be maintained in good operating condition and in full repair;

(b) Be designed to provide for the medical care and transportation of patients;

(c) Comply fully with ambulance design criteria contained in "Federal Specifications for Ambulances", KKK-A-1822 D (11/94) (GSA federal specifications) in effect at the time the ambulance is manufactured, except for color and provider identification.

(d) Comply with KRS 189.910 through 189.950 regarding the use of lights and siren.

(4)(a) The Class II ambulance provider shall require that a certification decal or sticker be supplied by the manufacturer of newly purchased ambulances, indicating that the ambulance met GSA federal specifications on the date it was manufactured. The certification decal shall be located on a permanent surface, such as in the ambulance oxygen tank compartment, or as later identified in a GSA federal specification revision.

(b) A Class II ambulance provider shall require, for units that are later modified, the conversion company to supply a letter to verify the modification meets or exceeds the GSA federal specification requirements, except for color or provider identification, as incorporated in the GSA federal specifications on the ambulance original date of manufacture.

(5) In addition to the GSA federal specifications, the following state licensing requirements shall be maintained:

(a) The heating system shall maintain a temperature of not less than sixty-five (65) degrees Fahrenheit in the driver and patient compartments in winter weather conditions;

(b) The air conditioning system shall maintain a temperature of not more than eighty-five (85) degrees Fahrenheit in the driver and patient compartments in summer weather conditions; and

(c) The name of the ambulance provider shall appear on the

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exterior surface of the ambulance.

(6)(a) A preventive maintenance program for each ambulance and its equipment shall be developed and implemented to keep them in optimum working order to protect the health and safety of the patient and ambulance personnel.

(b) Documentation shall be maintained by the ambulance provider to support evidence of periodic inspections or calibrations required for maintenance and operation of the ambulance and its equipment.

(7) The interior of the ambulance and its equipment shall be checked after each use to ensure that they are kept and maintained in a clean and sanitary condition, unless precluded by emergency conditions.

(8) A communications system shall be developed, coordinated, and maintained by each ambulance provider. The communication system shall meet the following requirements:

(a) A Class II ambulance shall be equipped with two (2) way radio communication equipment capable, under normal conditions, of contacting the ambulance dispatch center and the receiving facility;

(b) One (1) portable communication device per ambulance, on the ambulance radio frequency, shall be provided for personnel if away from the ambulance;

(c) A Class II provider shall have an acceptable plan to assure that all calls are promptly answered, and runs are dispatched in an expedient manner;

(d) An ambulance provider shall provide orientation to all drivers and attendants related to communication protocols that have been established by the service.

Section 5. Basic Life Support Personnel. (1) A Class II provider shall be staffed to provide (2) attendants for each run. One (1) attendant shall remain with the patient at all times during transport;

(2) There shall be no more patients, personnel, and other persons than can be safely secured by means of seat safety belts or similar devices in the ambulance during transportation; and

(3) All personnel shall be capable of performing their job duties, and shall not cause the patient or other personnel any undue harm.

(4) The driver on each Class II ambulance run shall:

(a) Be at least eighteen (18) years of age, with current motor vehicle operator's license;

(b) Have at least two (2) years of licensed driver/operator experience;

(c) Complete a defensive driving training program that is developed by the ambulance provider or in conjunction with another agency or organization. The defensive driving training program shall be repeated for each driver at least every four (4) years.

1. The training program shall consist of four (4) hours review of driving a vehicle under emergency conditions;

2. Documentation shall be available to support training in at least the following areas:

a. Review of KRS 189.910 through 189.950 regarding emergency vehicles.

b. Forward and back-up driving maneuvers in a controlled situation, such as in an obstacle course designed specifically for this purpose.

c. Review of defensive driving techniques and procedures by hands-on experience or exposure by visual aids, such as video tapes, slides, or planned demonstrations.

(5) One (1) ambulance attendant on each Class II ground ambulance run shall be certified or licensed for one (1) of the following levels:

(a) Emergency medical technician (EMT);

(b) Paramedic;

(c) Registered nurse (RN) licensed by the Kentucky Board of Nursing (KBN); or

(d) Physician licensed by the Kentucky Board of Medical Licensure (KBML).

(6) The second ambulance attendant, who may also be the driver

shall have certification or licensing for one (1) of the following levels:

(a) EMT- first responder;

(b) EMT;

(c) Paramedic;

(d) RN licensed by the KBN; or

(e) Physician licensed by the KBML.

(7) Personnel who on occasion may serve as an attendant or a driver shall meet the qualifications for both roles. Documentation shall be required in personnel files for personnel who:

(a) Serve as drivers only in a three (3) person crew; and

(b) Do not render any type of first aid or medical treatment; or

(c) Serve as attendants only.

(8) Ambulance personnel required to meet patient needs for interfacility or facility-to-home patient transports may be determined by the attending physician and the initiating facility, in conjunction with the ambulance service staff.

Section 6. Equipment and Supplies. A Class II ground ambulance shall carry and maintain, in full operational order, the following equipment and supplies:

(1) Suction, ventilation, and blood pressure equipment.

(a) Fixed and portable suction apparatus including:

1. Rigid tonsillar catheters; and

2. Flexible catheters in the sizes 6 French (F), 8F, 10F and 14F;

1000 ml with oxygen reservoir with adult and infant size masks (capable of use with oxygen);

(c) Nasopharyngeal and oropharyngeal airways in newborn, infant, child, and adult sizes; and

(d) Adult, obese adult, infant, and child sphygmomanometer cuffs with stethoscope. A permanently mounted sphygmomanometer shall not satisfy this requirement.

(2) Oxygen equipment.

(a) Fixed and portable oxygen tanks with a filled, minimum size D, secured spare portable cylinder;

(b) Pressure gauge and flow rate regulator (range of zero to fifteen (15) liters per minute);

(c) Oxygen humidifier attachment for use on the fixed oxygen tank;

(d) Adapter and tubing;

(e) Transparent simple oxygen masks for adults and children;

(f) Transparent nonrebreather oxygen masks for adults, children and infants; and

(g) Nasal cannulas for adults, children, and infants.

(3) Bandages and tape.

(a) Two (2) sterile universal dressings at least ten (10) inches by thirty (30) inches, compactly folded and packaged;

(b) Twenty-five (25) sterile gauze pads, four (4) inches by four (4) inches;

(c) Ten (10) soft roller self-adhering bandages, various sizes;

(d) Four (4) rolls of adhesive tape, minimum of two (2) sizes;

(e) Ten (10) triangular bandages with large safety pins; and

(f) Two (2) sterile burn sheets.

(4) Miscellaneous supplies.

(a) Eye protector pads and shields;

(b) One (1) roll of aluminum foil, or an occlusive substitute approved by the licensing agency;

(c) Shears for bandages;

(d) Hand held flashlight;

(e) Two (2) penlights;

(f) Two (2) sterile obstetrical kits;

(g) Sterile irrigation fluids with current expiration date, if stocked on the ambulance, shall be obtained and maintained according to local, state, and federal statutes and regulations.

(5) Splints and immobilization devices.

(a) Lower extremity traction splint, or equivalent as approved by the cabinet, for use in EMT training;

(b) Splints for arm, leg, and foot (e.g., inflatable air splints, padded boards, ladder splints, or acceptable substitute approved by the cabinet);

(c) Immobilization devices.

1. Short spine board or other acceptable extrication device, as determined by the cabinet; and

2. Long spine board with cervical immobilization accessories;

3. An orthopedic "scoop" stretcher or other full-body immobilization device as determined by the cabinet.

(d) Rigid, stiff cervical collars in large, medium, small adult, no-neck, and pediatric sizes;

(e) A short spine board or an acceptable substitute, as determined by the cabinet, shall be provided for administering CPR.

(6) Safety supplies and equipment.

(a) Two (2) five (5) pound size, ABC multipurpose fire extinguishers, approved by Underwriters Laboratory, Coast Guard, or Factory Mutual. One (1) shall be located in the driver compartment and the other located in the patient compartment;

(b) Multiposition stretcher with wheels and a mechanism to secure the stretcher while in transit;

(c) One (1) pocket mask with an isolation valve per patient attendant;

(d) One (1) clean scrub gown (or substitute, such as disposable coveralls), disposable mask, and gloves per patient attendant;

(e) One (1) particulate filter face mask per attendant meeting federal standards set by the Occupational Safety and Health Administration (OSHA) and one (1) face mask per patient meeting OSHA standards for use during transport of patients known to be infected with tuberculosis;

(f) A means of cleansing the hands shall be provided, such as the provision of a solution or disposable towelettes;

(g) Hospital type disinfectants;

(h) Plastic bags for disposal of waste materials;

(i) Puncture resistant containers for disposal of sharp objects, if sharps are carried;

(j) Two (2) clean blankets, sheets, and pillowcases;

(k) Tissues or similar substitute; and

(l) An emesis container or similar substitute.

Section 7. Material Incorporated By Reference. The following material is incorporated by reference and may be inspected, obtained, or copied at the Office of the Commissioner, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. to 4:30 p.m., Monday through Friday.

(1) Form EHS-8A, "Kentucky Emergency Medical Service Ambulance Run Report," (2/91).

(2) "Federal Specifications for Ambulances", KKK-A-1822 D (11/94), General Services Administration, Federal Supply Service, Washington, D.C. 20406.

RICE C. LEACH, Commissioner

JOHN MORSE, Secretary

APPROVED BY AGENCY: July 8, 1996

FILED WITH LRC: July 12, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1996 at 9 a.m. at the Health Services Auditorium, 1st Floor, CHS Building. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1996 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing will be canceled. This hearing is open to the public. Any person who attends will be given the 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, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written

notification of intent to attend the hearing or written comments on the proposed administrative regulation to: William K. Moore, Jr., Acting General Counsel, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, Telephone: (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Contact person: Robert Calhoun

(1) Type and number of entities affected: Approximately ten (10) Class II ground ambulance providers.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. This administrative regulation will have no effect on the cost of living or employment in the state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. Class II ground ambulance services which do not currently stock the full complement of basic life support equipment will incur additional costs of \$300 to \$500 to purchase the equipment.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Additional compliance, reporting, or paperwork may be required in this administrative regulation for written mutual aid agreements, and for completion of the state run form as required in KRS 216B.410. Additional compliance, reporting and paperwork may be required in this administrative regulation to conduct preemployment criminal and Department for Transportation (DOT) background checks. There is no DOT charge for an open records check. The Administrative Office of the Courts does not charge a fee for individuals or nonprofit and governmental units who provide a tax exempt number. However a self addressed stamped envelope is required. A \$10 fee is charged to all others. This will not have an effect on competition because the same requirements apply to all ambulance providers licensed in Kentucky.

2. Second and subsequent years: Same as 1. above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be additional costs to the cabinet for processing state run forms for currently licensed non-emergency health transportation (NEHT) providers who become licensed as Class II ground ambulance providers. The cabinet will incur additional costs as NEHT services apply to become Class II services and as new Class II ground ambulance providers receive certificates of need and apply to the cabinet to be licensed.

2. Continuing costs or savings: As above.

3. Additional factors increasing or decreasing costs: The Cabinet will incur additional costs to inspect Class II providers and conduct complaint investigations.

(b) Reporting and paperwork requirements: Processing state run forms for Class II providers and completing inspection surveys.

(4) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues attributable to the requirements of this administrative regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation will continue existing licensing fees for ground ambulance providers. This fee income and general funds will be utilized for implementation of this administrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: Class II ambulance providers licensed under this

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administrative regulation will provide basic life support transportation services. These may be reimbursable services under Medicare. This would have a positive economic impact on the providers of these services and may lead to increased services, including service to Medicare recipients and to the general public.

(b) Kentucky: Kentucky may receive additional Medicare funds.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered. This administrative regulation complies with the specific legislative requirements of House Bill 492, as passed in the 1996 General Assembly, which requires the cabinet to promulgate administrative regulation to address the specific requirements for the licensing of Class II ground ambulance providers.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: When fully implemented, this administrative regulation will have a beneficial effect on the public's health in terms of improving the quality of ambulance services in Kentucky by establishing basic life support as the minimum level of service.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Yes

(c) If detrimental result would result, explain detrimental effect: The public's health would be jeopardized without an administrative regulation to establish minimum requirements for Class II ground ambulance providers.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity or proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: The purpose of this emergency regulation is to comply with HB 492 passed by the 1996 General Assembly.

(11) TIERING: Is tiering applied? Yes. Tiering is applied because this administrative regulation addresses requirements for only the CLASS II ground ambulance provider.

CABINET FOR HEALTH SERVICES Department for Health Services Division for Environmental Health and Community Safety (New Administrative Regulation)

902 KAR 55:100. Laetrile manufacturing standards.

RELATES TO: KRS 217.950, 217.952, 311.950 to 311.966, 311.991

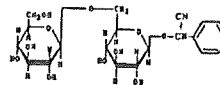
STATUTORY AUTHORITY: KRS 194.050, 217.950, EO 95-79

NECESSITY AND FUNCTION: KRS 217.950 provides that Amygdalin (laetrile) may be manufactured in this state subject to licensing by the Cabinet for Human Resources and directs the Secretary for Human Resources to adopt administrative regulations which prescribe minimum standards for manufacturers in preparing, compounding, processing, and packaging the substance. The secretary is also directed to establish standards of purity and make periodic tests and inspections of both the facilities for manufacture and samples to ascertain the purity, quality, and identity. Executive Order 95-79, effective December 28, 1995, reorganizes the Cabinet for Human Resources and places the Department for Health Services and its programs under the Cabinet for Health Services.

Section 1. Intent. In adopting an administrative regulation relating to the manufacture of Amygdalin (laetrile), the Cabinet for Health Services takes official notice that this substance has not been approved by the Federal Food and Drug Administration and that the interstate shipment of the substance has been held to be illegal. This

administrative regulation is adopted in recognition of existing federal restrictions.

Section 2. Definitions. (1) "Amygdalin", laetrile means Amygdalin, D-mandelonitrile-beta-D-glucoside-6-beta-D-Glucoside, including all dosage forms.



It includes:

(a) D-Amygdalin; and

(b) D, L-Amygdalin.

(2) "Cabinet" means the Cabinet for Health Services.

(3) "Current good manufacturing practices" means 21 CFR 210.1 to 210.3 - Current Good Manufacturing Practices in Manufacturing, Processing, Packing, or Holding of Drugs and 21 CFR 211.1 to 211.208 - Current Good Manufacturing Practice for Finished Pharmaceuticals adopted by the U.S. Food and Drug Administration.

Section 3. Licensing Requirements. (1) A person, partnership, association, corporation, or other business organization shall not manufacture, prepare, or compound Amygdalin in this state without a license from the cabinet.

(2) Application for a license shall be made on Form DCB-1, "Application for License to Manufacture Amygdalin", provided by the cabinet, and shall include the training and experience of personnel and a description of the facilities, equipment, and materials to be used in the manufacture of Amygdalin.

(3) A license shall not be issued to manufacture Amygdalin unless the applicant:

(a) Is of good moral character, or if the applicant is an association or corporation, its officers are of good moral character;

(b) Is in compliance with "Current Good Manufacturing Practices";

(c) Has qualified personnel to perform assigned tasks;

(d) Submits the formula, including all components, involved in the manufacture of the product;

(e) Submits a label which discloses all information required for a prescription drug, including a disclosure of possible side effects;

(f) Is financially responsible; and

(g) Is in compliance with all provisions of this administrative regulation.

Section 4. License Expiration; Renewal. (1) Every license issued by the cabinet to manufacture Amygdalin shall expire on June 30 of each year following the date of issuance unless suspended or revoked.

(2) A license shall not be renewed by the cabinet to manufacture Amygdalin unless the applicant is in compliance with the provisions of this administrative regulation.

Section 5. Manufacturing Practices. The current good manufacturing practices in manufacturing, processing, packing, or holding of drugs in 21 CFR 210.1 to 210.3 and the current good manufacturing practice for finished pharmaceuticals in 21 CFR 211.1 to 211.208 adopted by the U.S. Food and Drug Administration shall apply.

Section 6. Standards of Identity, Purity, and Tests for D-Amygdalin.

(1) Powder form:

(a) Molecular formula: $C_{20}H_{27}NO_{11}$;

(b) Molecular weight: 457.4;

(c) Description: White powder - melting range: varies with water of crystallization and previous melting;

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(d) Solubility: (mg/ml) water 125, ethanol 0.33, ten (10) percent ethanol 20, ether insoluble, methylene chloride insoluble;

(e) Stability:

1. Solution: (10 mg/ml) Determined by gas chromatography of TMS derivative:

pH 6 phosphate buffer Stable at least twenty-four (24) hours
pH 8 phosphate buffer No more than fifteen (15) percent L-Amygdalin formed in twenty-four (24) hours

0.1 N HCl No more than sixty-five (65) percent decomposition in ten (10) minutes

0.1 N NaOH No more than fifty-six (56) percent decomposition in ten (10) minutes

2. Bulk: A sample stored at sixty (60) degrees Celsius for thirty (30) days showed no degradation as indicated by gas chromatography;

(f) Elemental composition:

Carbon	52.51
Hydrogen	5.95
Nitrogen	3.06
Oxygen	38.48

(g) Water: The compound shall not contain more than six (6) percent water, determined by Karl-Fischer;

(h) Infrared spectrum: The infrared spectrum conforms to reference material;

(i) Ultraviolet absorption: (H₂O) a solution has the following absorption peaks (alpha max) and extinction coefficients (E):

Alpha max	E
268 nm	214
262 nm	312
257 nm	287
252 nm	203
208 nm	7400

(j) Nuclear magnetic resonance: (D₂O)

Chemical Shift (δ)	Pattern	No. Protons	Assignment
3.2-5.2	m	14	Glucosyl protons
5.9	s	1	H - C - C = N
7.6	s	5	Phenyl protons

(k) Optical rotation:

$$[\alpha]_D^{20} = -42^\circ (1, H_2O)$$

Merck Index, 8th Ed. (1968);

(l) Gas chromatography:

1. Column: three (3) percent OV-1 on 100/200 Chromosorb W, AW-DMCS in glass column;
2. Oven temperature: 250 degrees to 275 degrees Celsius programmed at one (1) degree per minute;
3. Carrier gas: N₂, thirty-five (35) ml. per minute;
4. Sample: TMS-derivative of the sample (Prepare by dissolving one (1) mg. of the sample in five-tenths (0.5) ml. tri-sil with gentle heat.);
5. Detection: Flame ionization at 300 degrees Celsius;

(m) Thin layer chromatography:

1. Adsorbent: SiO₂·HF;
2. Solvent system: n-BuOH/HOAc/H₂O (6:3:1);
3. Sample applied: 100γ, 200γ, (H₂O);

4. Detection: UV, I₂, KBR Spray;

(n) Purity: The compound shall not contain more than one (1) percent total impurities other than water;

(o) Suggested identity tests: IR, UV & NMR Spectra; and

(p) Suggested assay procedures: Thin layer and gas chromatography.

(2) Tablet form:

TEST	SPECIFICATION
Assay:	Ninety (90)-110 percent of label

HPLC Method	
Column-Lichrosorb RP8,	The total of all uv absorbing
300 mm. x 4 mm.	impurities shall not exceed
Mobile phase 25%	five (5) of this chromatogram
CH ₃ OH in H ₂ O	
Flow rate - 2 ml./min.	
Detector/sensitivity-uv at	
254 nm/0.02 aufs	

Disintegration:	100% within fifteen (15)
Current USP method	minutes

Dissolution:	100% within thirty (30) minutes
Current USP method	

Weight variation	Conforms to current USP
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Thin layer chromatography (Methanol extraction)	Compares favorably to reference material
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Adsorbent: Silica gel GF

Solvent system: n-BuOH/

HOAc/H₂O, 4/1/1

Sample applied: 200, 100γ (MeOH)

References:

D,L-Amygdalin, 100γ (H₂O)

D,L-Amygdalinamide, 2, 4γ (H₂O)

D,L-Amygdalin acid, 3, 5γ (H₂O)

Detection: uv, I₂, H₂SO₄ - charring.

Section 7. Standards of Identity, Purity, and Tests for D,L-Amygdalin. (1) Powder form:

(a) Molecular formula: C₂₀H₂₇NO₁₁;

(b) Molecular weight: 457.4;

(c) Description: White powder;

(d) Solubility: (mg./ml.) Water 350; Methanol 100+; Chloroform 0.1;

(e) Stability:

1. Solution: A solution of ten (10) mg. in one (1) ml. water shows no degradation as indicated by gas chromatography, after twenty-four (24) hours.

2. Bulk: A sample stored at sixty (60) degrees Celsius for thirty (30) days shows no degradation as indicated by gas chromatography.

(f) Elemental composition:

Carbon	52.51
Hydrogen	5.95
Nitrogen	3.06
Oxygen	38.48

(g) Water: The compound shall not contain more than six (6) percent water, determined by Karl-Fischer;

(h) Infrared spectrum: The infrared spectrum conforms to reference material;

(i) Ultraviolet absorption: (H₂O)

Alpha max	E
268 nm	206
262 nm	300
257 nm	280

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252 nm 200

(j) Optical rotation:

$$[\alpha]_D^{21} = -52^\circ (1, H_2O)$$

(k) Nuclear magnetic resonance: (D₂O)

Chemical Shift (δ)	Pattern	No. Protons	Assignment
3.2-5.2	m	14	Glucosyl protons
5.9	s	½	H - C - C = N (<u>L</u> -form)
6.1	s	½	H - C - C = N (<u>D</u> -form)
7.6	s	5	Phenyl protons

Internal Reference for Assay: Pyrocatechol, 6.9δ;

(l) Gas chromatography:

1. Column: three (3) percent OV-1 on 100/200 Chromosorb W-HP glass column, 6' x 2 mm;

2. Carrier gas: N₂, forty (40) ml. per minute;

3. Oven temperature: 240 degrees to 275 degrees Celsius programmed at two (2) ml. per minute;

4. Sample: TMS-derivative (Prepare by dissolving one (1) mg. in five-tenths (0.5) ml. tri-sil with gentle heat.);

5. Detection: FID at 280 degrees Celsius;

(m) Thin layer chromatography:

1. Adsorbent: SiO₂-GF;

2. Solvent system: n-BuOH/HOAc/H₂O (12:3:1);

3. Sample: 100γ, 200γ, (H₂O);

4. Detection: I₂, UV, (NH₄)₂SO₄ - charring;

(n) Purity: The compound consists of about 50:50 D,L-material. There shall not be more than three (3) percent total organic impurities. The compound shall not contain more than six (6) percent water;

(o) Suggested identity tests:

1. Infrared spectrum;

2. Ultraviolet absorption; or

3. Nuclear magnetic resonance;

(p) Suggested assay procedures:

1. Thin layer chromatography;

2. Karl-Fischer determination; or

3. Gas chromatography.

(2) Sterile injectable form:

TEST	SPECIFICATION
Content uniformity	Ninety (90) to 110 percent of label
HPLC Method	The total of all uv absorbing
Column-300 mm. x 4 mm. I.D.	impurities shall not exceed
Lichrosorb RP8	five (5) percent of this
Mobile phase - 25% CH ₃ OH	chromatogram.
in H ₂ O	
Flow rate - 2 ml./min.	
Detector/sensitivity-uv at	
254 nm./0.02 aufs.	
Moisture - determine by	less than two (2) percent
Karl-Fischer	
Weight variation	Conforms to current USP

pH of reconstituted solution 4.0 to 8.0

Color of solution Colorless

Clarity and completeness of solution Conforms to current USP

Particulate matter Conforms to current USP

USP sterility test Sterile

USP pyrogen test Nonpyrogenic at 600 mg./kg.

Thin layer chromatography Compares favorably to reference material

Adsorbent: Silica gel GF

Solvent system:

n-BuOH/HOAc/H₂O, 4/1/1

Sample applied: 400, 200γ (H₂O)

References:

D,L-Amygdalin, 200γ (H₂O)

D,L-Amygdalinamide, 1, 2γ (H₂O)

D,L-Amygdalin acid, 1, 2γ (H₂O)

Detection: uv, I₂, 30% H₂SO₄ - charring.

Section 8. Adulterated Amygdalin. Amygdalin shall be adulterated if:

(1) It consists in whole or in part of a filthy, putrid, or decomposed substance;

(2) Produced, prepared, packed, or held under unsanitary conditions where it may have been contaminated with filth or rendered injurious to health;

(3) Its container is composed in whole or in part of a poisonous or deleterious substance which may render the contents injurious to health;

(4) Its strength differs from, or its quality or purity falls below, the standard set forth in this administrative regulation. The determination of strength, quality, or purity shall be made in accordance with the tests or methods of assay in this administrative regulation;

(5) Its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess; or

(6) It has been:

(a) Mixed or packed to reduce its quality or strength; or

(b) Substituted wholly or in part.

Section 9. Misbranded Amygdalin. (1) Amygdalin shall be misbranded if:

(a) Labeling is false or misleading in any particular;

(b) In package form, unless it bears a label containing:

1. Name and place of business of the manufacturer, and name and place of business of the packer or distributor, if other than manufacturer; and

2. An accurate statement of the quantity of the contents in weight, measure, or numerical count; reasonable variations shall be permitted;

(c) A word, statement, or other information required by 21 CFR 201.1 to 201.319 and this administrative regulation to appear on the label or labeling is not prominently placed with clarity (compared with other words, statements, designs, or devices, in the labeling) and in terms likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(d) The label does not state:

1. The common or usual name of Amygdalin;

2. Directions for use; and

3. Warnings against:

a. Use in pathological conditions where a danger to health exists;

b. Use by children where a danger to health exists; and

c. Unsafe dosage, methods, or duration of administration or

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application;

(e) It has been found by the cabinet to be apt to deteriorate, unless it is packaged in a manner to protect public health, and its label bears a statement of precautions;

(f) The container is made, formed, or filled to be misleading;

(g) It is an imitation of another substance;

(h) It is offered for sale under the name of another substance;

(i) It is dangerous to health if used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling;

(j) Intended for use by man unless, prior to dispensing, its label bears the statement "Caution: Kentucky law prohibits dispensing without prescription;" or

(k) The label, as originally packed, directs that it is to be dispensed or sold only on prescription, unless dispensed or sold on a prescription of an authorized practitioner, and its label, as dispensed, bears the name and place of business of the dispenser or seller, the serial number and date of the prescription, and the name of the licensed practitioner. Amygdalin prescriptions shall not be refilled.

(2) Amygdalin sold on a prescription of a practitioner shall be exempt from the requirements of this section if:

(a) The practitioner is licensed by law to administer Amygdalin; and

(b) Amygdalin bears a label containing:

1. The name and place of business of the seller;

2. The serial number and date of the prescription;

3. The name of the practitioner; and

4. The name of the patient for whom prescribed.

(3) It is not the intention of subsection (1)(b)1 of this section to require the name and place of business of the wholesaler to appear upon the label of the package.

Section 10. Inspections. The cabinet or its duly authorized agent shall have free access at all reasonable times to a factory, warehouse, or establishment in which Amygdalin is manufactured, processed, packed, or held for sale for the purpose of:

(1) Inspecting the factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling, to determine if any of the provisions of this administrative regulation are being violated.

(2) Securing samples or specimens of Amygdalin. It shall be the duty of the cabinet to make or cause to be made examinations of samples secured under the provisions of this section to determine if a provision of this administrative regulation is being violated.

(3) Examining or reproducing books, papers, documents, or other evidence pertaining to Amygdalin.

Section 11. Detention or Quarantine of Amygdalin if Adulterated or Misbranded. (1) If a duly authorized agent of the cabinet finds, or has probable cause to believe, that any Amygdalin is adulterated or misbranded pursuant to this administrative regulation, the agent shall affix a tag or marking, giving notice that Amygdalin is, or is suspected of being, adulterated or misbranded and has been detained or quarantined. The tag or marking shall be a warning not to remove or dispose of Amygdalin until permission for removal or disposal is given by the agent or the district court. A person shall not remove or dispose of detained or quarantined Amygdalin without permission.

(2) If Amygdalin detained or quarantined under subsection (1) of this section has been found by the agent to be adulterated or misbranded, the agent shall petition the judge of the district court where the Amygdalin is detained or quarantined for an order for condemnation. Nothing in this section shall require the cabinet or its agent to go to court if destruction of the quarantined Amygdalin is accomplished by agreement made in writing with the owner. If the agent has found Amygdalin detained or quarantined is not adulterated or misbranded, the agent shall remove the tag or marking.

Section 12. Revocation or Suspension of License. (1) The cabinet may suspend or revoke a license to manufacture Amygdalin for violation of a provision of this administrative regulation after proper notice and an opportunity for a due process hearing.

(2) All administrative hearings shall be conducted in accordance with 902 KAR 1:400.

Section 13. Incorporation by Reference. (1) Form DCB-1, "Application for License to Manufacture Amygdalin", revised October 1993, is being incorporated by reference. This form may be inspected, copied or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. until 4:30 p.m., Monday through Friday.

(2) 21 CFR 201.1 to 201.319, revised as of April 1, 1995, is being incorporated by reference. A copy may be inspected, copied or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. until 4:30 p.m. A copy may also be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(3) 21 CFR 210.1 to 210.3, revised as of April 1, 1995, is being incorporated by reference. A copy may be inspected, copied or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. until 4:30 p.m. A copy may also be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(4) 21 CFR 211.1 to 211.208, revised as of April 1, 1995, is being incorporated by reference. A copy may be inspected, copied or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. until 4:30 p.m. A copy may also be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Section 14. 900 KAR 1:015, Laetrile manufacturing standards, is hereby repealed.

RICE C. LEACH, M.D., Commissioner

JOHN MORSE, Secretary

APPROVED BY AGENCY: June 18, 1996

FILED WITH LRC: June 26, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held August 21, 1996 at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 E. Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by August 16, 1996. If no notification of intent to attend the hearing is received by that date the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments to: William K. Moore, Acting General Counsel, 275 E. Main St. - 4 West, Frankfort Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Contact person: Edward Crews

(1) Type and number of entities affected: The type and number of entities affected cannot be determined but is probably zero. The administrative regulation that is being repealed has been in effect since 1981 and there have been no applications to manufacture laetrile and no inquiries about the manufacture of laetrile. Furthermore, Kentucky has no manufacturers of any drug within the state.

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(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received on this issue.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received on this issue.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There is no compliance, reporting or paperwork required by this regulation other than what is required by federal regulations.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no anticipated costs or savings to the administrative agency.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There is no reporting or paperwork anticipated by this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues is expected.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The administration of drug regulations is financed by the general fund.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No comments were received related to this issue.

(b) Kentucky: No comments were received related to this issue.

(7) Assessment of alternative methods: reasons why alternatives were rejected: Alternatives were rejected because they would fail to comply with the requirements of KRS 217.950.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None because laetrile is not approved by the FDA.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy conflicts, overlaps or duplicates this administrative regulation.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied because the standards are identical for all manufacturers, regardless of size or location.

CABINET FOR FAMILIES AND CHILDREN Department for Social Insurance Division of Management & Development (New Administrative Regulation)

904 KAR 3:042. Food Stamp Employment and Training Program.

RELATES TO: KRS 194.050, 7 CFR 273.7, PL 103-66

STATUTORY AUTHORITY: KRS 194.050, EO 95-79

NECESSITY AND FUNCTION: The Cabinet for Families and Children is required to administer a Food Stamp Employment and Training Program. KRS 194.050 provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation sets forth the technical eligibility requirements used by the cabinet in the administration of the Food Stamp Employment and Training Program. Administrative regulation 904 KAR 3:041 has expired and this administrative regulation corrects a deficiency on that administrative regulation that was found by the Interim Joint Committee on Health and Welfare by deleting an age factor to the priority status criteria listed in Section 3(2) of this administrative regulation.

Section 1. Definitions. (1) "Conciliation" means a fifteen (15) day period that is used to determine why noncompliance with food stamp employment and training requirements occurred.

(2) "Exempt" means an individual who is excused by the agency from participation in the employment and training program.

(3) "Primary wage earner" means the household member providing the most earned income in the prior two (2) months.

(4) "Voluntary quit" means the self termination of employment by a household member on a voluntary basis.

Section 2. Work Registration. (1) Except those meeting exempt criteria in subsection (4) of this section, all household members shall be required to register for work:

(a) At the initial application for food stamps; and

(b) Every twelve (12) months following the initial application.

(2) Work registration shall be completed by:

(a) The member required to register; or

(b) The person making application for the household.

(3) Unless otherwise exempt, persons who are excluded household members of the food stamp case, shall be required to register for work during periods of disqualification. These individuals are:

(a) Ineligible aliens;

(b) Individuals disqualified for refusing to provide or apply for a Social Security number; and

(c) Individuals disqualified for intentional program violation.

(4) The following shall be exempt from work registration requirements:

(a) A person younger than sixteen (16) years of age or a person sixty (60) years of age or older;

(b) A person age sixteen (16) or seventeen (17) who is not a head of a household or who is attending school, or enrolled in an employment training program on at least a half-time basis;

(c) A person with a physical or mental disability;

(d) A household member subject to and complying with any work requirement in the Aid to Families with Dependent Children Program;

(e) A parent or other household member who is responsible for the care of:

1. A dependent child under age six (6); or

2. An incapacitated person;

(f) A person who receives unemployment compensation or a person who has applied for, but has not yet begun to receive, unemployment compensation if that person was required to register

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for work with the Department for Employment Services as part of the unemployment compensation application process;

(g) A regular participant in a substance abuse or alcohol treatment and rehabilitation program;

(h) A person who is employed or self-employed and:

1. Working a minimum of thirty (30) hours weekly; or

2. Receiving weekly earnings at least equal to the federal minimum wage multiplied by thirty (30) hours;

(i) A migrant or seasonal farm worker who:

1. Meets the criteria in paragraph (h) of this subsection; and

2. Is under contract or similar agreement with an employer or crew chief to begin employment within thirty (30) days; or

(j) A student enrolled at least half time in any recognized school, training program, or institution of higher education, provided that those meeting student status have met the eligibility conditions in 904 KAR 3:025, Section 3.

(5) A household member who loses exemption status due to a change in circumstances that are subject to the reporting requirements of the Food Stamp Program shall work register:

(a) When the change is reported, if the change is:

1. A change in the source of income or in the amount of gross monthly income totaling more than twenty-five (25) dollars, unless the amount change is in an Aid to Families with Dependent Children grant;

2. Any change in household composition, including the addition or loss of a household member;

3. A change in residence and the resulting change in shelter costs;

4. The acquisition of a nonexempt licensed vehicle or loss of a vehicle exemption for a household member who has a physical disability;

5. A change in total resources that reach or exceed the allowable maximum; or

(b) At the household's next recertification if the change in circumstance involves a change not subject to reporting requirements in paragraph (a) of this subsection.

(6) All nonexempt household members shall be subject to the following work requirements:

(a) Keep the initial assessment interview;

(b) Provide requested verification by mail or in person;

(c) Participate in a Food Stamp Employment and Training Program if assigned;

(d) Respond to any request for additional information regarding employment status or availability for work;

(e) Report to an employer if referred by the food stamp employment and training worker or designee provided that the potential employment is not unsuitable as designated in Section 7 of this administrative regulation; and

(f) Accept a bona fide offer of suitable employment at a wage not less than state or federal minimum wage.

(7) Household members who are exempt or those completing the work registration requirements may volunteer to participate in the Food Stamp Employment and Training Program.

(8) The food stamp employment and training worker shall explain to the food stamp applicant:

(a) The work requirements for each nonexempt household member;

(b) The rights and responsibilities of the work registered household members; and

(c) The consequences of failing to comply.

(9) Each household member required to register shall be notified in writing of the requirements in subsection (6) of this section.

Section 3. Employment and Training Participation. (1) Work registrants who reside in a county which offers a Food Stamp Employment and Training Program shall be required to participate in the Food Stamp Employment and Training Program based on priority

status.

(2) Priority status shall be determined if the work registrant:

(a) Has no high school diploma or general equivalency diploma (GED);

(b) Has no employment in the last twelve (12) months; or

(c) Is a veteran.

(3) Food stamp employment and training participants shall:

(a) Be placed in education, skills training or job search activities;

(b) Be reimbursed for miscellaneous and dependent care expenses, if otherwise eligible, up to:

1. The child care maximum payments as specified in 904 KAR 2:017 not to exceed \$200 per month per child under two (2) years of age or \$175 per month per child for all other eligible dependent children for child care expenses incurred on or after September 1, 1994; and

2. Twenty-five (25) dollars a month for miscellaneous expenses incurred while participating in the Food Stamp Employment and Training Program.

(4) Those participants who do not meet the criteria in subsection (2) of this section shall not be selected to participate in a Food Stamp Employment and Training component unless they are adamant about participating.

Section 4. Components. All counties offering the Employment and Training Program shall offer the following services and activities:

(1) Educational components shall be:

(a) Literacy programs;

(b) Adult basic education (ABE);

(c) General equivalency diploma (GED); and

(d) Community college.

(2) Skills training components shall be:

(a) Vocational school;

(b) On-the-job training; and

(c) Kentucky Domestic Violence Association (KDVA).

(3) Job search components shall be:

(a) Job seeking skills training;

(b) Group job search; and

(c) Individual job search.

Section 5. Conciliation. (1) When a food stamp employment and training participant fails to comply with Food Stamp Employment and Training Program requirements, a conciliation period shall be initiated.

(2) Conciliation shall be used to:

(a) Determine the reason for the noncompliance; and

(b) Allow the participant the opportunity to resolve the problem in order to continue participation.

(3) Conciliation lasts for fifteen (15) days and in that time the food stamp employment and training worker shall:

(a) Determine good cause for noncompliance; or

(b) Encourage the participant to resume food stamp employment and training activity; or

(c) Recommend disqualification for failure to comply with program requirements.

(4) If the participant resumes food stamp employment and training activity, no further action is required toward applying a sanction.

(5) If conciliation is unsuccessful and the participant does not provide good cause or refuses to comply, a disqualification shall be imposed.

Section 6. Determining Good Cause. (1) Good cause shall be determined in instances where the work registrant has failed to comply with:

(a) Work registration requirements as specified in Section 1 of this administrative regulation;

(b) Employment and training requirements as specified in Section 3 of this administrative regulation; or

(c) Voluntary quit requirements as specified in Section 9 of this

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administrative regulation.

(2) Good cause for failing to meet work registration and employment and training requirements shall include circumstances beyond the control of the registrant including:

- (a) Illness;
- (b) Illness of another household member requiring the presence of the registrant;
- (c) A household emergency;
- (d) Unavailability of transportation; and
- (e) Inadequate child care for children who have reached age six (6) but are under age twelve (12).

Section 7. Sanctions in the Food Stamp Employment and Training Program. (1) Disqualifications shall be imposed as follows:

(a) If the nonprimary wage earner fails to comply with food stamp employment and training requirements, the individual shall be ineligible to receive food stamp benefits for two (2) months;

(b) If the primary wage earner fails to comply with food stamp employment and training requirements, the entire household shall be ineligible to receive food stamp benefits for two (2) months.

(2) If a disqualification is imposed, the disqualified member shall make reapplication for food stamps or request that the member be added to an active food stamp case to initiate a cure for noncompliance.

(3) Ineligibility as outlined in subsections (1) and (2) of this section continues until the ineligible member:

- (a) Leaves the household;
- (b) Becomes exempt from work registration;
- (c) Complies with the work registration requirements; or
- (d) The two (2) month disqualification period expires, whichever occurs first.

(4) If an ineligible household member joins a new household and:

(a) Is the primary wage earner, the entire new household then becomes ineligible for the remainder of the disqualification period; or

(b) Is not the primary wage earner, only he remains ineligible for the remainder of the disqualification period.

Section 8. Unsuitable Employment. Employment shall be considered unsuitable by the agency if:

(1) The wage offered is less than the highest of the following:

- (a) The applicable federal minimum wage;
- (b) The applicable state minimum wage; or
- (c) Eighty (80) percent of the federal minimum wage if neither the federal nor state minimum wage is applicable.

(2) The employment offered is on a piece-rate basis and the average hourly yield the employee can reasonably expect to earn is less than the applicable hourly wage specified in subsection (1) of this section.

(3) The household member, as a condition of employment or continuing employment, is required to join, resign from, or refrain from joining any legitimate labor organization.

(4) The work offered is at a site subject to a strike or lockout at the time of the offer, unless the strike has been enjoined under 29 USC 178 and 45 USC 152.

(5) In addition, employment shall be considered unsuitable if the household member involved can demonstrate or the worker otherwise becomes aware that:

- (a) The degree of risk to health and safety is unreasonable;
- (b) The member is physically or mentally unsuited to perform the employment. This shall be documented by medical evidence or by reliable information from other sources;

(c) The employment offered within the first thirty (30) calendar days of registration is not in the member's major field of experience as demonstrated by the individual or if the worker otherwise becomes aware;

(d) Daily commuting time exceeds two (2) hours a day, not including transporting a child to and from a child care facility;

(e) The distance to the place of employment prohibits walking and neither public nor private transportation is available to transport the member to the job site; or

(f) The working hours or nature of the employment interferes with the member's religious observances, convictions or beliefs.

Section 9. Voluntary Quit. (1) A primary wage earner who voluntarily quits a job of twenty (20) hours or more a week without good cause sixty (60) days or less prior to the date of food stamp application shall not be eligible to participate in the program.

(2) The disqualification period for voluntary quit shall be:

(a) Ninety (90) days from the date of quit if the individual is an applicant; and

(b) Ninety (90) days beginning with the first of the month after all normal procedures for taking adverse action have been taken if the individual is in an active food stamp case.

(3) Good cause for leaving employment includes criteria in Section 5 of this administrative regulation and the following:

(a) Discrimination by the employer based on:

- 1. Age;
- 2. Race;
- 3. Sex;
- 4. Color;
- 5. Disability;
- 6. Religious beliefs;
- 7. National origin; or
- 8. Political beliefs;

(b) Work demands or conditions that render continued employment unreasonable, as in working without being paid on time;

(c) Acceptance of employment by the head of household, or enrollment of at least half time in any recognized school, training program or institution of higher education, that requires the head of household to leave employment;

(d) Acceptance of employment by any other household member or enrollment at least half time in any recognized school, training program or institution of higher education in another county or similar political subdivision which requires the head of household to leave employment;

(e) Resignations of persons under age sixty (60) which are recognized by the employer as retirement;

(f) Employment which becomes unsuitable by not meeting criteria in Section 8 after the acceptance of the employment;

(g) Acceptance of a bona fide offer of employment of more than twenty (20) hours a week or in which the weekly earnings are equivalent to the federal minimum wage multiplied by twenty (20) hours which, because of circumstances beyond the control of the primary wage earner, subsequently either does not materialize or results in employment of less than twenty (20) hours a week or weekly earnings of less than the federal minimum wage multiplied by twenty (20) hours; and

(h) Leaving a job in connection with patterns of employment in which workers frequently move from one (1) employer to another as in migrant farm labor or construction work.

(4) Good cause for voluntary quit shall be verified if questionable.

Section 10. Curing Sanction for Voluntary Quit. (1) A household may begin participation in the Food Stamp Program following the voluntary quit disqualification period if it applies again and is determined eligible.

(2) Eligibility may be reestablished during a disqualification period and the household shall, if otherwise eligible, be allowed to resume participation if the member who caused the disqualification:

(a) Secures new employment which is comparable in salary or hours to the job which was quit; or

(b) Leaves the household.

(3) A work registrant who:

(a) Is required to participate in the:

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1. Food Stamp Employment and Training Program; or
2. Aid to Families with Dependent Children, Job Opportunities and Basic Skills Program as specified in 904 KAR 2:006 and 904 KAR 2:370; and

(b) If fails to participate shall be ineligible to receive food stamp benefits for two (2) months unless:

1. Good cause exists;
2. The noncompliant individual was participating in a Job Opportunities and Basic Skills Program component which is more stringent than the components of the Food Stamp Employment and Training Program; or

3. The noncompliant Job Opportunities and Basic Skills Program participant is otherwise exempt from work registration in the Food Stamp Employment and Training Program.

(c) An individual who is not sanctioned in the Food Stamp Program as meeting the criteria in paragraph (b)2 of this subsection shall be work registered in the Food Stamp Employment and Training Program unless otherwise exempt by subsection 2 of this section.

Section 11. Hearing Process. Work registrants shall have the same opportunity to request a hearing as specified in 904 KAR 3:070.

Section 12. Replacements for employment and training reimbursement checks that are lost or stolen shall be made by completing appropriate forms.

Section 13. Material Incorporated by Reference. (1) Forms necessary for participation in the Food Stamp Employment and Training Program are being incorporated. These forms include:

- (a) ET-101, revised 7/93;
- (b) ET-102, revised 8/93;
- (c) ET-102 Supplement A, revised 12/91;
- (d) J/ET-108, revised 9/91;
- (e) ET-111, revised 7/93;
- (f) ET-112, revised 10/90;
- (g) ET-114, revised 12/91;
- (h) ET-116, revised 12/93.

(2) Material Incorporated by Reference may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

JOHN L. CLAYTON, Commissioner

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: July 3, 1996

FILED WITH LRC: July 10, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1996, at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1996, five days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Jr., Acting General Counsel, Cabinet for Families and Children, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: There is no method for

the agency to determine how many entities will be affected by removing the age limit from the priority status criteria. When the age limit was put into place there was a slight decrease in the number of individuals served by the Food Stamp Employment and Training Program. It was originally anticipated that a decrease of approximately 50% would occur but we have not seen that large of a decrease. As a result by removing the age limit, we do not anticipate a significant increase.

(2) Direct and indirect cost or savings to those affected: This amendment does have not direct cost or savings to those affected.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: This amendment will not create any additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: See item #1.

(3) Effects on the promulgating administrative body: The removal of age limits on the priority status criteria should result in a slight increase in the number of individuals served by the Food Stamp Employment and Training Program.

(a) Direct and indirect cost or savings: This amendment should have a minimal fiscal impact to the agency in that by removing the age factor there will be some additional individuals who meet the priority status criteria. Additional funding will not be required to make the change in this amendment.

1. First year: See direct and indirect cost or savings.

2. Continuing cost or savings: Same as item #1.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This amendment will not result in any additional reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: 100% federal dollars for administration based on allotted amount awarded to states. Any additional administrative dollars are paid with 50% / 50% matching dollars. Benefits are paid at a 50% / 50% match.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received.

(b) Kentucky: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No other alternative methods pursued. This regulation corrects a deficiency cited by the Interim Joint Committee on Health and Welfare.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This regulation corrects a deficiency cited by the Interim Joint Committee on Health and Welfare who were concerned that adding the age limit

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to the priority status would prevent some individuals from participating in the Employment and Training Program.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Some committee members believe that adding the age limits could be considered discriminatory for individuals over the age of 30. As a result, we are removing the age limit to prevent such a detrimental effect from occurring.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect is expected.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No, federal statutes mandate that eligibility requirements for the Food Stamp Program be implemented in a like manner on a statewide basis, thereby prohibiting tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The age limit that is being deleted is a state option. There is no federal mandate that requires the limit to either be applied or not be applied.

2. State compliance standards. There is no state requirement for an age limit to be applied.

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. No

3. State the aspect or service of local government to which this administrative regulation relates. None

4. How does this administrative regulation affect the local government or any service it provides? It does not affect local government or any service it provides.

CABINET FOR HEALTH SERVICES Department for Medicaid Services (New Administrative Regulation)

907 KAR 3:005. Physicians' services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.50, EO 96-862

NECESSITY AND FUNCTION: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision

of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the provisions relating to physicians' services for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and the medically needy. This administrative regulation is not the same as the administrative regulation 907 KAR 1:009 found deficient and is substantially different since it no longer contains the provision(s) found deficient.

Section 1. Physicians' Services. (1) Covered services shall include those furnished by physicians through direct physician-patient contact in the office, the patient's home, a hospital, nursing facility or elsewhere.

(2) For purposes of the Medicaid Program, oral surgeons shall be treated in the same manner as physicians with regard to coverage for services within their scope of licensed practice, and the term "physician" shall be construed to include oral surgeons unless the context in which it is used is to the contrary.

(3) Covered physicians' services and service limitations are shown in the Physician Manual.

Section 2. Physicians Manual. (1) The Physician Manual specifies the conditions for participation, services covered, and limitations for the physicians' services component of the Medicaid Program. "The Physician Manual", revised December 1995, shall be incorporated by reference in this administrative regulation.

(2) The manual shall be on file in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Third Floor East, Frankfort, Kentucky 40621.

(3) The manual shall be available for review during the normal business week, Monday through Friday, 8 a.m. through 4:30 p.m. (eastern time), excluding state holidays.

(4) Copies may be obtained from the Department for Medicaid upon payment of an appropriate fee in accordance with KRS 61.872.

Section 3. Additional Limitations. (1) A patient placed in "lock-in" status due to over-utilization shall receive services only from his lock-in provider except in the case of emergency or referral.

(2) Laboratory procedures.

(a) Laboratory procedures performed in the physician's office shall be limited to those procedures listed on the Department for Medicaid Services physician laboratory benefit schedule.

(b) The professional component of physician laboratory procedures performed by board certified pathologists in a hospital setting or an outpatient surgical clinic shall be covered if the physician has an agreement with the hospital or outpatient surgical clinic for the provision of laboratory procedures.

(3) The cost of preparations used in injections shall not be considered a covered benefit, except as specified in the Physician Manual.

(4) Telephone contacts with patients shall not be considered a covered benefit.

(5) Services performed or recipient contacts made exclusively by physician assistants, nurses, or other physician's employees shall not be covered under the physicians' services component.

Section 4. Implementation Date. The provisions of this administrative regulation shall be applicable with regard to services provided on or after April 15, 1996.

JOHN H. MORSE, Commissioner and Secretary

APPROVED BY AGENCY: July 12, 1996

FILED WITH LRC: July 12, 1996 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1996 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending

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this hearing shall notify this agency in writing by August 16, 1996 five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Jr., Acting General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7900, Fax Number: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick or Anita Moore

(1) Type and number of entities affected: All physicians participating in the Medicaid Program.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: *Cost impact reflected in the companion regulation 907 KAR 3:010E.

2. Continuing costs or savings: *Cost impact reflected in the companion regulation 907 KAR 3:010E.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be implemented statewide.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: To ensure that medically necessary physicians' services are available for Medicaid eligible recipients.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, or welfare of Medicaid recipients because medically necessary physicians' services may not be available.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: This is the companion regulation to 907 KAR 3:010.

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions or arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et. seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et. seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

CABINET FOR HEALTH SERVICES Department for Medicaid Services (New Administrative Regulation)

907 KAR 3:010. Reimbursement for physicians' services.

RELATES TO: KRS 205.550

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.50, 42 CFR 447 Subpart B, 42 USC 1396a-d, 1396s and EO 96-862

NECESSITY AND FUNCTION: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the method for establishing reimbursements for physicians' services. This administrative regulation is not the same as the administrative regulation 907 KAR 1:010 found deficient and is substantially different since it no longer contains the provisions found deficient.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services.

(2) "Resource-based relative value scale (RBRVS) unit" is a value based on current procedural terminology (CPT) codes established by the American Medical Association assigned to the service which takes into consideration the physicians' work, practice expenses, liability insurance, and a geographic factor based on the prices of staffing

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and other resources required to provide the service in an area relative to national average price.

(3) "Usual and customary charge" means as defined in 907 KAR 1:002.

Section 2. Reimbursement. (1) Payment for covered physicians' services shall be based on the physicians' usual and customary actual billed charges up to the fixed upper limit per procedure established by the department using a Kentucky Medicaid Fee Schedule developed from a resource-based relative value scale (RBRVS). If there is no RBRVS based fee the department shall set a reasonable fixed upper limit for the procedure consistent with the general rate setting methodology. Fixed upper limits not determined in accordance with the principle shown in this subsection of the administrative regulation (if any) due to consideration of other factors (such as recipient access) shall be specified in the administrative regulation.

(2) RBRVS units shall be multiplied by a dollar conversion factor to arrive at the fixed upper limit.

(a) The dollar conversion factors effective for the period ending June 30, 1996 shall be as follows:

Types of Service	Kentucky Conversion Factor
Deliveries	Not Applicable
Anesthesia (except delivery-related)	\$25.15
All Other Services	\$25.80

(b) The dollar conversion factors effective for the period beginning on July 1, 1996 shall be as follows:

Types of Service	Kentucky Conversion Factor
Deliveries	Not Applicable
Anesthesia (except delivery-related)	\$29.02
All Other Services	\$29.67

Section 3. Reimbursement Exceptions. The following covered services which are reimbursement exceptions are shown in the Physicians Manual which is incorporated by reference in 907 KAR 3:005.

(1) Physicians shall be allowed to secure drugs for specified immunizations identified in 907 KAR 3:005 as follows:

(a) Free through the Vaccines for Children Program in accordance with the terms, standards, and criteria described in 42 USC 1396(a) (62) and 1396s; or

(b) In the open market. The Department for Medicaid Services shall reimburse the physician the same amount that the Department for Public Health would pay to obtain that drug.

(2) Payments for specified obstetrical services, shall be reimbursed the lesser of the actual billed charge or at the standard fixed fee paid by type of procedure. The obstetrical services and fixed fees shall be: Vaginal delivery only, \$870; Vaginal delivery including postpartum care, \$900; Cesarean delivery only, \$870; and Cesarean delivery including postpartum care, \$900.

(3) For delivery-related anesthesia services, a physician shall be reimbursed the lesser of the actual billed charge or a standard fixed fee paid by type of procedure. Those procedures and standard fixed fees shall be: Vaginal delivery, \$200; Epidural single, \$315; Epidural continuous, \$335; and Cesarean section, \$320.

(4) Payment for individuals eligible for coverage under Medicare Part B is made in accordance with the individual's Medicare deductible and coinsurance liability.

(5) Family practice physicians practicing in geographic areas with no more than one (1) primary care physician per 5,000 population, as reported by the United States Department of Health and Human Services, shall be reimbursed at the physicians' usual and customary

actual billed charges up to 125 percent of the fixed upper limit per procedure established by the department.

(6) Physician laboratory services shall be reimbursed based on the Medicare allowable payment rates. For laboratory services with no established allowable payment rate, the payment shall be sixty-five (65) percent of the usual and customary actual billed charges.

(7) Procedures specified by Medicare and published annually in the Federal Register and which are commonly performed in the physician's office shall be subject to outpatient limits if provided at alternative sites and shall be paid adjusted rates to take into account the change in usual site of service.

(8) Payments for the injection procedure for chemonucleolysis of intervertebral disk(s), lumbar shall be the lesser of the actual billed charge or at a fixed upper limit of \$793.50 as established by the department.

(9) Certain injectable antibiotics and antineoplastics, and contraceptives shall be reimbursed at the lesser of the actual billed charge or at the average wholesale price of the medication supply minus ten (10) percent.

(10) Specified family planning procedures performed in the physician office setting shall be reimbursed at the lesser of the actual billed charge or the established RBRVS fee plus actual cost of the supply minus ten (10) percent.

Section 4. Implementation Date. The provisions of this administrative regulation shall be applicable for services provided on or after April 15, 1996 except as otherwise specified.

JOHN H. MORSE, Commissioner and Secretary

APPROVED BY AGENCY: July 12, 1996

FILED WITH LRC: July 12, 1996 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 22, 1996 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 17, 1996 five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Jr., Acting General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7900, Fax Number: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick or Anita Moore

(1) Type and number of entities affected: All physicians participating in the Medicaid Program.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

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(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$26 million (Cost)

2. Continuing costs or savings: \$26 million (Cost)

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be implemented statewide.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: To ensure that medically necessary physicians' services are available for Medicaid eligible recipients.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, or welfare of Medicaid beneficiaries because medically necessary physicians' services may not be available.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions or arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et. seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et. seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

ADMINISTRATIVE REGISTER - 1312

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE Minutes of July 1, 1996

The July meeting of the Administrative Regulation Review Subcommittee was held on Monday, July 1, 1996, at 10 a.m. in Room 149 of the Capitol Annex. Representative Jesse Crenshaw, Chairman, called the meeting to order, and the roll call was taken. The minutes of the June 3, 1996 meeting were approved.

Present were:

Members: Representative Jesse Crenshaw, Chairman, Senators Fred Bradley, John David Preston; Representatives Jimmy Lee, James E. Bruce, Woody Allen.

LRC Staff: Greg Karambellas, Donna Little, Susan Wunderlich, Peggy Jones, Donna Valencia, Susan Eastman, Don Hines, Cindy Schweickart.

Guests: Ann Louise Cheuvront, Mark Brengelman, John Grant, Attorney General's Office; Gary Munsie, Patty Howell, Board of Dentistry; Emma Lou Hartlage, Embalmers and Funeral Directors Board; Don Walker, John Phillips, Department of Fish and Wildlife; David Reichert, Sarah M. Jackson, Division of Charitable Gaming; Jack Damron, Brenda Priestly, Tamela Biggs, Department of Corrections; Joe Norsworthy, Frederick Huggins, Debbie Linnig Michals, Steve Forbes, Labor Cabinet - OSHA; Deborah Eversole, Ralph Dennis, Public Service Commission; Judith G. Walden, Housing, Buildings and Construction; Karen Doyle, Vicki Jeffs, John A. Volpe, Patricia Patterson, Anne Hager, Robert Nelson, John H. Walker, Cookie Whitehouse, Robert Calhoun, Ed Crews, Fran Hawkins, Mark Hooks, Cabinets for Health Services and Families and Children; Herbert L. Segal, United Steelworkers of America; Michael Hewlett, Homer Moore, Harry L. Hedrick, U.S.W.A. Local 1865; David Swift, Teamsters Local 89; David Barnhill, U.S. DOL - Federal OSHA; John Brazel, Kentucky Chamber of Commerce; Carl Breeding, Associated Industries of Kentucky; Joe Geraci, Cincinnati Bell; Mike Porter, Kentucky Dental Association.

The Subcommittee determined that the following administrative regulation, as amended by the promulgating agency and the Subcommittee, does not comply with statutory requirements:

Board of Embalmers and Funeral Directors

201 KAR 15:090 Hearings. John Grant, Assistant Attorney General and General Counsel to the Board; and Emma Lou Hartlidge, Executive Secretary of the Board, represented the Board. Subcommittee staff stated that: (1) the amendment to this administrative regulation was made to comply with: (a) the format requirements of KRS 13A.220(4); (b) the drafting requirements of KRS 13A.222(4); and (c) KRS 13A.120(2)(e),(f), prohibiting the summary or repetition of a statute in an administrative regulation; and (2) two issues remained to be considered and acted upon by the Subcommittee.

Representative Lee: (1) cited Section 4 of the administrative regulation; and (2) asked whether the Board investigator would be a witness at hearings conducted by the Board. Mr. Grant stated that Section 4 was intended to make it clear that every party in a proceeding by the Board is entitled to keep one person as a representative of the agency. Representative Lee stated that: (1) while it was likely the Board would have an investigator to investigate the issue and would have an investigator at the hearing, the licensee would not have an investigator to assist him; and (2) it appeared to him that the due process rights of the licensee would be violated because the Board investigator would be permitted to hear the testimony of others and testify after hearing the testimony of other witnesses.

Mr. Grant stated that: (1) prohibiting the exclusion of the Board investigator during testimony by other witnesses was analogous to the

procedure followed in: (a) criminal proceedings that permits a police officer who investigated a case to: 1. sit with the prosecutor during the testimony of other witnesses; 2. assist the prosecutor; and 3. testify; and (b) a lawsuit involving a corporation, during which the president of the corporation is permitted to hear all testimony and testify; (2) in Board hearings, there is not a representative of the Board who sits with the prosecutor to help with the hearing; (3) Section 4 makes it clear that the representative of the Board is the Board investigator who can assist the Board at the hearing; (4) generally, an investigator is not called upon to testify and his duties are restricted to investigation and interviews of witnesses; and (5) frequently, the only time an investigator is called to testify relates to his interview with the licensee for impeachment purposes.

Representative Lee stated that: (1) he understood the reasoning behind Section 4; (2) believed that impeachment could be accomplished by questioning the witness; (3) felt that exempting the investigator from exclusion during the testimony of other witnesses ran the risk of the investigator changing his testimony to fit his case; (4) the appearance of unfairness and the potential for a violation of the rights of a licensee, that was created by the exemption, concerned him and led him to question this administrative regulation; (5) unless Section 4 was amended, and the issues raised by Section 4 were resolved, he would find this administrative regulation deficient.

Chairman Crenshaw stated that: (1) this administrative regulation governed a civil, rather than a criminal, proceeding; (2) the analogy with the role of law enforcement officers in federal or state criminal proceedings was not relevant; (3) the Board's attorney is the true representative of the Board; and (4) rather than no one being present on behalf of the Board, the Board attorney is present on behalf of the Board. Mr. Grant stated that: (1) the Board attorney was never the representative of the Board; (2) in any civil or criminal proceeding, two people, the lawyer and a nonlayer who assists are present throughout the proceeding for the prosecution. Chairman Crenshaw stated that: (1) it is the party, rather than the investigator, who testifies; and (2) the comparison with the corporation president omitted the fact that the president of the corporation is present because he is the equivalent of a party.

Mr. Grant stated that the exemption from exclusion of the investigator was established in Section 4 because: (1) sometimes, the Board investigator was not actually employed by the Board; (2) some boards: (a) do not have an employee who is an investigator; and (b) use an investigator from the Attorney General's office, or contract with a private person to investigate; (3) the Board attorney needs a person to assist him with the hearing; (4) if the assistant were a Board employee who served as full-time investigator, he could not be excluded from hearing the testimony of witnesses because he would be considered a: (a) representative of the Board; and (b) party; and (5) Section 4 makes it clear that if an investigator is not formally employed by the Board, he may not be excluded.

Chairman Crenshaw asked whether, under the scenario presented by Mr. Grant, an investigator retained by a licensee also would be exempted from exclusion. Mr. Grant stated that: (1) if an investigator retained by a licensee was also to be a witness, he would not be exempted from being excluded during the testimony of other witnesses; and (2) he was unaware of a case in which a licensee hired an investigator.

Representative Lee: (1) stated that: (a) Section 6 provided that a licensee did not have the right to refuse mediation; (b) this violated due process rights, because anyone had the right to: 1. refuse mediation; and 2. exercise his right to a hearing; and (2) asked Mr. Grant to explain the reason for mandatory mediation. Mr. Grant stated that Section 6: (1) did not require licensees to mediate; (2) only granted the hearing officer the power to order a mediation session,

and to set a mediation meeting, which was analogous to a court ordering a settlement conference; and (3) required parties to attend, but did not mandate that they mediate.

Representative Lee: (1) asked why the administrative regulation did not offer mediation upon consent of all parties, rather than mandate mediation; (2) stated that: (a) consensual mediation would preserve the rights of licensees and not violate due process; and (b) it appeared that an order to mediate required a party to attend or be defaulted. Mr. Grant stated that: (1) Section 6 only set a date to mediate; (2) frequently, it is difficult to contact a party; and (3) due process is not violated because a party is not forced to mediate. Representative Lee stated that: (1) Section 6 clearly provided that mediation could be ordered without the consent of either party; (2) this violated the due process right of licensees; (3) administrative regulations that contain even the slightest hint that anyone would be disallowed due process should not be promulgated; and (4) asked Mr. Grant why the state would do this. In response to Mr. Grant's statement that the intent of the Board was not to violate due process, Representative Lee stated that: (1) this administrative regulation needed a lot of work; (2) Sections 4 and 6 should be amended; and (3) he would not vote to approve this administrative regulation because of its effect on due process.

The Subcommittee approved a motion by Representative Lee finding this administrative regulation deficient because the Board had violated the due process rights of licensees to a fair hearing and exceeded statutory authority in Sections 4 and 6, by: (1) exempting the Board investigator from exclusion during the testimony of other witnesses, in Section 4; and (2) mandating mediation without the consent of the parties, in Section 6.

In response to a request by Mr. Grant to defer consideration of this administrative regulation: (1) Chairman Crenshaw stated that the Subcommittee had repeatedly offered him the opportunity to amend this administrative regulation; and (2) Subcommittee staff stated that: (a) the Board could file a Notice of Intent to amend this administrative regulation to delete the language upon which the finding of deficiency was based, and otherwise complete the filing and review procedure established by KRS Chapter 13A; (b) Subcommittee staff would assist the Board; (c) deferral of this administrative regulation at this meeting: 1. should have been made prior to the Subcommittee determination; 2. is not mandatory; and 3. could be accomplished by a motion to reconsider this administrative regulation, which is a matter for Subcommittee discretion.

The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:

Board of Dentistry

201 KAR 8:121. Repeal of 201 KAR 8:120. Gary Munsie, Executive Director, Board of Dentistry; Patty Howell, Member, Board of Dentistry, and Mark Brengelman, Assistant Attorney General assigned as General Counsel to the Board of Dentistry, represented the Board. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was added, pursuant to KRS 13A.220(3)(e); (2) the NECESSITY AND FUNCTION paragraph was amended to clearly and accurately state the necessity for and function served by the administrative regulation, pursuant to KRS 13A.220(3)(f); and (3) Section 1 was amended to comply with the formatting requirements for repealing an administrative regulation.

201 KAR 8:150. Examination; application. This administrative regulation was amended as follows: (1) the Title was amended to comply with KRS 13A.222(2)(a), (b); (2) the NECESSITY AND FUNCTION paragraph was amended to clearly state the necessity for and function served by the administrative regulation, pursuant to KRS 13A.220(3)(f); (3) Section 1 was amended to comply with the drafting requirements of KRS 13A.222(4)(a),(j), (k); (4) Section 2 was

amended to correct the formatting of the incorporation by reference, pursuant to KRS 13A.225(1); and (5) the Application to Practice Dentistry Form, incorporated by reference, was amended to: (a) correct grammar and punctuation errors, pursuant to KRS 13A.222(4); and (b) use the current name for a state agency.

201 KAR 8:260. Dental hygiene; application. This administrative regulation was amended as follows: (1) the Title was amended to comply with KRS 13A.222(2)(a), (b); (2) the NECESSITY AND FUNCTION paragraph was amended to clearly state the necessity for and function served by the administrative regulation, pursuant to KRS 13A.220(3)(f); (3) Section 1 was amended to comply with the drafting requirements of KRS 13A.222(4)(a),(j), (k); (4) Section 2 was amended to correct the formatting of the incorporation by reference, pursuant to KRS 13A.225(1); and (5) the Application to Practice Dental Hygiene Form, incorporated by reference, was amended to use the current name for a state agency.

201 KAR 8:330. Hygienists' temporary retirement; reinstatement. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY AND FUNCTION paragraph was amended to clearly state the necessity for and function served by the administrative regulation, pursuant to KRS 13A.220(3)(f); and (3) Section 1 was amended to: (a) comply with KRS 13A.222(4)(c); and (b) delete subsection 2 since KRS 313.305(2) establishes a comprehensive scheme, pursuant to KRS 13A.120(2)(e) and (f).

Board of Embalmers and Funeral Directors

201 KAR 15:010. Definitions. John Grant, Assistant Attorney General and General Counsel to the Board; and Emma Lou Hartlodge, Executive Secretary of the Board, represented the Board. Mr. Grant stated that: (1) during the last session, the General Assembly completely revised the Board's laws; (2) the Board is updating its administrative regulations to conform with those changes; (3) the two administrative regulations being repealed were: (a) incorporated into the statute; and (b) dealt with the: 1. approval of schools; and 2. reinstatement and renewal of licenses.

This administrative regulation was amended as follows: (1) in Section 1, the definition of "full-time" was amended pursuant to KRS 13A.222(4)(e) and 316.030(6)(c) and (7); and (2) Section 2 was amended to delete the phrase "but not limited to," pursuant to KRS 13A.100 and 13A.130.

201 KAR 15:050. Apprenticeship requirements. This administrative regulation was amended as follows: (1) Section 1 was amended to correct punctuation; and (2) Section 2 was amended to make subsections (4) and (5) separate sections of the administrative regulation, pursuant to KRS 13A.220(4), 13A.222(4)(a), and 316.030(8).

201 KAR 15:080. Complaints of violations. In response to questions from Senator Kafoglis, Mr. Grant stated that: (1) there is no time table for the: (a) dismissal of a complaint; and (b) notification of respondents of the dismissal; (2) upon receipt, a complaint against an establishment, funeral director, or embalmer is sent to the respondent for a response; (3) even if everything in a complaint is assumed to be true, after a review of the complaint and the response, the Board may determine that a violation has not occurred; (4) frequently investigations may take several months to complete; (5) after an investigation, the Board may set the matter for a hearing or dismiss a complaint; (6) there is no deadline for the dismissal of a complaint because an investigation takes time to be completed; (7) the Board meets monthly and: (a) processes complaints quickly; and (b) discusses the status of each complaint.

In response to a question from Senator Kafoglis, Ms. Hartlodge stated that: (1) respondents are notified monthly as to the status of the complaints filed against them; and (2) the majority of complaints are dismissed within a month.

In response to a question from Chairman Crenshaw, Senator

Kafoglis stated that (1) he is not very familiar with the workings of the Board; (2) if a Complaint is filed, a person should know what action has been taken within a certain amount of time; and (3) because the Board indicated it is acting within a reasonable time, he would not make an issue of the absence of a deadline.

This administrative regulation was amended as follows: (1) the NECESSITY AND FUNCTION paragraph was amended to state that the agency is authorized to promulgate the administrative regulation, pursuant to KRS 13A.220(3)(f); and (2) Section 3(3) was amended to clarify that the notification of a complaint dismissal shall be made in writing.

Department of Fish and Wildlife Resources: Game

301 KAR 2:111. Deer and turkey hunting on federal areas. Don Walker, Assistant Director, Division of Wildlife; and John Phillips, Program Coordinator for the deer program, represented the Department. In response to a question from Chairman Crenshaw, Mr. Walker stated that the amendment to this administrative regulation is necessary to: (1) establish consistent frameworks for federal areas; (2) allow the taking of fallow deer at the Land Between the Lakes; and (3) change the tagging requirements at Reelfoot National Wildlife Refuge.

In response to questions from Representative Allen, Mr. Phillips stated that: (1) state and federal officials work together on areas such as Land Between the Lakes; (2) while the PVA police patrol the Land Between the Lakes: (a) the state and the PVA work together; and (b) the state leads the wildlife work there because the PVA Police do not specialize in wildlife enforcement; and (3) there are state and federal administrative regulations for these areas.

Representative Bruce stated that (1) he lives in an agricultural area in west Kentucky; (2) he has received lots of complaints over the years, and more prevalent now, about deer and crops; (3) while combining wheat, he noticed that there were fifty deer among his wheat acres; and (4) sooner or later, either hunters should be able to kill more deer, or agricultural people should be paid damages.

In response to questions from Senator Roeding, Mr. Phillips stated that: (1) the penalties in the state administrative regulation are less than in the federal administrative regulations rather than more stringent; (2) the requirements established by the state administrative regulations are similar to those established by the federal administrative regulations; and (3) the state cooperates with the federal government in setting quotas and other requirements. Mr. Walker stated that: (1) this administrative regulation establishes a framework to enable the federal government to establish a hunting season in an area under its jurisdiction such as Ft. Knox which has been ceded from the Commonwealth; (2) federal authorities like to work closely with the Department to establish frameworks that are consistent with what the state would like to see in the harvest of the species in order to prevent harm to a species' population; and (3) federal authorities are very agreeable in working with the state to establish consistent frameworks throughout the state and in its federal areas.

Representative Bruce stated that he would like the state and federal wildlife personnel to come to his area to see all of the deer, especially late in the afternoon or early in the morning.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to delete unnecessary statutory citations; (2) the NECESSITY AND FUNCTION paragraph was amended to clearly state the necessity for and function served by the administrative regulation, pursuant to KRS 13A.220(3)(f); (3) Sections 1(2)(d), 2(2), 3(1), and 6(1) were amended to comply with the drafting requirements of KRS 13A.222(2)(a) and (b); and (4) Section 6(2) was amended to use "shall not" pursuant to KRS 13A.222(4)(b).

Justice Cabinet: Department of Corrections: Office of the Secretary

501 KAR 6:020. Corrections policies and procedures. Jack Damron and Tamela Biggs represented the Department. Department CPP 27-11-01, which is incorporated by reference into this administrative regulation, was amended as follows: (1) page 1 was amended to comply with the statutory authority granted to the Department in KRS 196.075; (2) pages 2 and 5 were amended to correct grammar and spelling; and (3) page 4 was amended to correct references to a CPP that was amended by the Cabinet at the June, 1996 meeting of the Subcommittee.

In response to a question from Representative Lee, Subcommittee staff stated that the amended clarified the statutory authority issue raised in the initial staff review.

501 KAR 6:060. Northpoint Training Center. In response to questions from Senator Roeding, Mr. Damron stated that: (1) NTC 14-03-01, Inmate Rights and Responsibilities, addressed the rights and responsibilities of inmates; (2) inmate rights included the following rights: (a) medical and dental services; (b) access to the courts; (c) a healthful environment; (d) lighting, ventilation, and heating; (e) nutritional meals; (f) a grievance procedure; (g) classification of inmates appropriate for their security; and (h) requests for transfers; (3) this policy is an outline of what an inmate should expect to receive while incarcerated; (4) this administrative regulation does not address efforts to reduce frivolous lawsuits by inmates; (5) it is very general and includes an inmate's right to: (a) ask the court to hear his case; and (b) a legal aide to assist him in getting into court; (6) during the 1996 Regular Session, the legislature passed a bill, House Bill 323, that should help eliminate frivolous litigation; (7) the Department has filed an amendment to its disciplinary administrative regulation in response to the bill; (8) the amendment makes the inmates lose good time for filing frivolous lawsuits; (9) policy NTC 14-03-01 is very generic in conferring rights, such as the right of access to the courts; (10) while access to the courts is mandated by the United States Supreme Court, NTC 14-03-01 does not expand it; (11) all of the prisons are certified by the American Correctional Association, a national organization that: (a) establishes national standards governing the operation of prisons, including the housing of inmates; and (b) audits each prison every three years; (12) Kentucky meets the Association's national standards, and all of Kentucky's prisons have passed every audit; and (13) the prisons are not luxury situations, and provide the basic life needs of individuals in prison.

Senator Roeding stated that: (1) while he has never toured a prison, he has toured an aircraft carrier; and (2) sailors in those situations are very, very cramped.

In response to a question from Representative Allen, Mr. Damron stated that: (1) the right to a healthful environment was established by decisions of the United States Supreme Court; (2) a "healthful environment" is usually determined after an inmate files a lawsuit in state or federal court; (3) such lawsuits are usually filed in federal court; (4) in the late 1980's and early 1990's, courts started to step back away from controlling the prisons, and they have increasingly refrained from close control; and (5) federal judges used to run the prisons, in effect, which the Department did not want.

Representative Allen: (1) stated that modern jails are like the Holiday Inn with large color television sets, and the inmates' ordering what they want to eat; (2) asked how Arizona is able to get away with: (a) overcrowded prisons; (b) inmates in pulp tents; (c) no air-conditioned housing; (d) food that is probably healthful but not what the inmates want; and (3) stated that since prisons had to comply with federal law, the same requirements should apply in Arizona and in Kentucky.

Mr. Damron stated that: (1) Arizona is in a different district in the United States Courts of Appeal; (2) the situation in Arizona is in litigation in the federal courts; (3) he did not know how the federal courts will determine the constitutionality of Arizona prison conditions; (4) the Arizona environment differs from Kentucky's, especially in winter; (5) this administrative regulation deals with a state prison rather than a jail, for which there are different requirements and standards.

In response to a question from Senator Roeding, Mr. Damron stated that: (1) NTC 13-23-01 addressed the special needs inmates; (2) inmates received at Northpoint are screened medically; (3) special needs are noted in the inmate's medical file; (4) acute medical needs are usually transferred to the Kentucky State Reformatory, where most of the medical problem inmates are housed; (5) if an inmate has a special condition that needs to be noted, such as diabetes, NTC 13-23-01 directs staff to make sure it is noted.

This administrative regulation was amended as follows: (1) the NECESSITY AND FUNCTION paragraph was amended to clearly state the function served by the administrative regulation, pursuant to KRS 13A.220(3)(f); (2) Section 1 was amended to: (a) correct the formatting of the Section pursuant to KRS 13A.220(4); and (b) delete a reference to NTC 11-04-01 which is being deleted; and (3) various pages of the NTC policies and procedures were amended to: (a) correct grammar and punctuation errors; (b) correct citations to referenced statutes and administrative regulations; (c) specify when to use an attached form; (d) use the correct name of state agencies; and (e) correct an inconsistency between two of the policies and procedures regarding the ability of inmates to enroll in educational and work programs simultaneously.

Public Service Commission: Utilities

807 KAR 5:026. Gas service; gathering systems. Deborah Eversole, Staff Attorney, and Ralph Dennis, Manager of the Gas Branch, represented the Commission. This administrative regulation was amended to: (1) add language stating that an item was incorporated by reference; and (2) change the numbering of a section to comply with the amendment relating to the addition of the incorporation by reference statement.

Department of Housing, Buildings and Construction: Electrical Inspectors

815 KAR 35:030. Kentucky certification of electrical contractors. Judith Walden, General Counsel, represented the Department of Housing. Ms. Walden stated that: (1) the Department certifies electrical contractors who want the certification; (2) the certification shows only that electrical contractors took a certain examination; (3) in the past under this administrative regulation: (a) contractors who wanted to were allowed to send in proof of insurance to the Department; and (b) the Department indicated on their identification cards that the contractors had shown the proof of insurance to the Department; and (4) the Department has deleted these requirements because: (a) the proof of insurance will have to be given at the local level wherever the contractors are working before they can get a permit; and (b) the provision requiring filing of proof of insurance with the Department had caused some administrative problems; and (5) all the certification is expected to show is that the contractor took an exam.

In response to questions from Representative Allen, Ms. Walden stated that: (1) the other provision that was amended was the \$25 renewal fee to continue the certification; (2) since contractors do not renew their certification timely, the new provision will allow contractors to be late without having to re-take the test; (3) while the Department hopes contractors will send the renewals in on time, if the contractors renew late, they must pay for the privilege; (4) if the renewal is sent in on time, it is \$25; (5) if it is late, it is \$100; (6) the Department sends to all contractors a notice of renewal two or three months before it is due; (7) the Department is trying to discourage people from waiting until next year to renew their certification; (8) because there is a problem with receiving the renewals on time, the Department wants to encourage everyone to play by the same rules; (9) certification is not mandatory; and (10) if the Department is going to deal with the paperwork, contractors should renew the certification on a timely basis or they should pay for it.

Representative Allen stated that: (1) he objects to the fee increase no matter what the reason is for the increase; (2) whenever

a person working for the public has a fee increase, the public will eventually have to pay for it. Representative Allen moved that the administrative regulation be found deficient. The motion died for lack of a second.

This administrative regulation was amended to reword Sections 4(2) and (3) to clarify the language for the delinquent renewal fee and for reinstatement. The Subcommittee approved this amendment, with Representatives Allen and Lee voting "no", and Senator Roeding passing.

The Subcommittee determined that the following administrative regulations complied with statutory requirements:

Board of Dentistry

201 KAR 8:430E. Unprofessional conduct. Gary Munsie, Executive Director, Board of Dentistry; Patty Howell, Member, Board of Dentistry, and Mark Brengelman, Assistant Attorney General assigned as General Counsel to the Board of Dentistry, represented the Board. Subcommittee staff stated that there may be formatting amendments to this administrative regulation when the ordinary administrative regulation is considered by the Subcommittee.

In response to a question from Senator Roeding, Mr. Brengelman stated that: (1) the emergency is the judicial challenge to the constitutionality of the term "unprofessional conduct"; (2) a Jefferson Circuit Court ruled the term unconstitutionally vague in an opinion overturning an administrative agency action; (3) the decision is not final and has been appealed to the Kentucky Court of Appeals; (4) if the Court of Appeals upholds the Jefferson Circuit Court's ruling that the term is unconstitutionally vague, it would be in the Board's and the public's best interest to have this administrative regulation in place to close the gap and further define "unprofessional conduct"; (5) the term is partially defined by the statute in KRS 313.130 and 313.140; (6) the Board wants an administrative regulation in place in case the Court of Appeals upholds the judgment of the Jefferson Circuit Court that the term, "unprofessional conduct", is unconstitutionally vague.

In response to a request from Chairman Crenshaw, Mr. Brengelman stated that he would forward a copy of the Jefferson Circuit Court opinion to Subcommittee staff for the record.

In response to a question from Representative Bruce, Subcommittee staff stated the formatting corrections suggested by the initial staff review would be made to the ordinary administrative regulation, because an emergency administrative regulation cannot be amended.

Board of Embalmers and Funeral Directors

201 KAR 15:030. Fees. John Grant, Assistant Attorney General and General Counsel to the Board; and Emma Lou Hartlodge, Executive Secretary of the Board, represented the Board. In response to a question from Chairman Crenshaw, Ms. Hartlodge stated that the: (1) establishment fees were increased from \$50 to \$100 per year; and (2) apprenticeship fees from \$20 to \$30. Mr. Grant stated that: (1) as part of the revision to the statute, the Board and interest groups, including the Funeral Directors Association, met and agreed on statutory changes and the fee increases; (2) the individual fees have not been increased; and (3) all the groups involved have agreed to the change.

201 KAR 15:040. Examination. In response to a question from Chairman Crenshaw, Ms. Hartlodge stated that: (1) this administrative regulation establishes the: (a) examination and its administration; and (b) topics covered in the funeral directors' and embalmers' examination; and (2) the content of the examinations has not changed.

In response to a question from Representative Bruce, Mr. Grant stated that the amendments to this administrative regulation consisted of: (1) drafting and format amendments; and (2) correction of statutory citations to conform with House Bill 574 enacted during the 1996 Regular Session.

Labor Cabinet: Kentucky Occupational Safety and Health Review Commission

803 KAR 50:010E. Hearings; procedure, disposition. The following people represented the Commission: Debbie Lynn Michaels, Executive Director of the OSHA Review Commission; Fred Huggins, Attorney for the Commission; David Barnhill, Area Director for the United States Department of Labor OSHA; Herbert Seagull, Attorney for the United Steelworkers Union; Steve Forbes, Federal-State Coordinator for Kentucky Labor Cabinet; Jeff Lagrew, Director of Administrative Hearings, Attorney General's Office; Carl Breeding, Attorney for Associated Industries of Kentucky; and John Braezel, Manager of Public Affairs, Kentucky Chamber of Commerce.

In response to questions from Representative Bruce and Chairman Crenshaw, Ms. Michaels stated that everyone at the table supported this administrative regulation. Chairman Crenshaw stated that the Subcommittee was pleased to see that everyone was in agreement on this administrative regulation.

Ms. Michaels stated that: (1) the Commission is: (a) a quasi-judicial agency that hears appealed OSHA cases; and (b) appeared before the Subcommittee to ask for support and approval of the emergency administrative regulation; (2) there is a tremendous backlog of cases at the Commission; (3) the wording of the state administrative regulation was amended to: (a) make it identical to the federal review commission's law; and (b) make it clearer; (4) the different groups with her, such as the unions and third party status industries: (a) appear before the review commission as respondents; (b) supported this administrative regulation; and (c) felt it was very important to them that this administrative regulation be approved by the Subcommittee.

Mr. Barnhill stated that he: (1) represented the Assistant Secretary of Labor; (2) monitored the Kentucky Occupational Safety and Health program to assure it is as effective as the federal program; and (3) believed that this administrative regulation was necessary because it allowed employee representatives the same access to review procedures that they have under the federal program.

Mr. Seagull stated that he: (1) supported this administrative regulation; (2) attended the meeting of the Subcommittee on behalf of unions and employees; and (3) believed it speaks volumes that the Chamber of Commerce, employers, unions, and employees all concur that this administrative regulation was important and necessary.

Mr. Forbes stated that: (1) as Federal-State Coordinator, he was responsible for coordinating the state plan with federal OSHA; and (2) his office: (a) was concerned that the state plan remain as effective as the federal program; and (b) felt that this administrative regulation would accomplish that without the loss of any federal funds.

Mr. Lagrew stated that: (1) this administrative regulation: (a) arose from an ambiguity in the previous administrative regulation; (b) clarifies the ambiguity; and (c) will ensure that the decisions of the hearing division are consistent; and (2) administrative hearings governed by this administrative regulation are exempted from KRS Chapter 13B to permit the establishment of administrative hearing procedures that comply with applicable federal laws.

Mr. Breeding stated that the Associated Industries of Kentucky supported this administrative regulation as a good measure for small business because it would move the hearing process along.

Mr. Braezel stated that the Kentucky Chamber of Commerce: (1) supported this administrative regulation; and (2) was pleased to be on the same side as both organized labor and other industry groups in this endeavor.

Ms. Michaels stated that there were additional people in the audience who supported this administrative regulation, including: (1) Homer Moore, the international representative for the steelworkers; (2) Mike Culik, the president of the Steelworkers; (3) David Swift, who represented the Teamsters' Union; and (4) Joe Norsworthy, Secretary of the Kentucky Labor Cabinet.

Public Service Commission: Utilities

807 KAR 5:062. Changing primary interexchange carrier; verification procedures. Deborah Eversole, Staff Attorney, and Ralph Dennis, Manager of the Gas Branch, represented the Commission.

Department of Housing, Buildings and Construction: Plumbing

815 KAR 20:130. House sewers and storm water piping; methods of installation. Judith Walden, General Counsel, represented the Department.

Hazardous Materials

815 KAR 30:060. Certification of underground petroleum storage tank contractors. In response to questions from Chairman Crenshaw, Ms. Walden stated that: (1) the storage tank contractors have been certified for some years; (2) this administrative regulation clarifies on page three the occasions when the certified person is required to be on-site; and (3) the certified persons will be required to be on-site more often under this administrative regulation.

Electrical Inspectors

815 KAR 35:015. Certification of electrical inspectors. Ms. Walden stated that: (1) this administrative regulation established a minimum number of 12 continuing education hours that each electrical inspector is required to complete; (2) the sections governing temporary approvals were amended to make the approvals consistent with actual practice in the industry; (3) with regard to beginning construction of a building: (a) approval of a pole for grounding is required; and (b) when approved by the electrical inspector, a red sticker is attached to the pole; (4) when a house or building gets underway and the wiring is installed, service is applied so that heat, regular lighting, and electricity will be running to the house; (5) a service only yellow sticker is applied, meaning that the building can be worked on, but not occupied; (6) a green sticker is applied after the final inspection by the certified electrical inspector; and (7) after the green sticker is applied, the building can be occupied.

In response to questions from Representative Allen, Ms. Walden stated that: (1) the Department certifies all electrical inspectors; (2) the regulation of the electrical inspection of buildings is done at the local level; (3) with the exception of state property, the state does not make any electrical inspections; (4) a county may hire or contract for inspections; (5) utility companies will not hook up the utilities unless an inspection has been made; (6) typically, one electrical inspector will: (a) approve the rough-in; and (b) return for the final inspection of a building; (7) every project should have at least a rough-in and a final inspection; (8) there is no double inspection by the electric company and the state inspectors; (9) the individual putting up the temporary pole might be different from the person doing the construction of the building; and (10) inspections are made at the local, rather than the state, level.

In response to questions from Representative Allen, Representative Lee stated that: (1) the owner of an all-electric home in Hardin County may be given incentives by the rural electric cooperative for having the all-electric home after inspection by the rural electric cooperative inspector to ensure the house meets the requirements for the rebate or discount; (2) this inspection: (a) relates only to qualification for the incentive program of the rural electric cooperative; and (b) is not the official Hardin County inspection; (3) some cooperatives have their own regulations; (4) houses must have a certain amount of insulation and meet other requirements to qualify for the cooperative's rebate program; and (5) in a rebate program, the cooperative may pay for the owner's heat pump.

Cabinet for Health Services: Department for Health Services: Administration

902 KAR 1:400E. Administrative hearings. John Walker, Assistant Counsel, Cabinet for Health Services, represented the Cabinet. In response to a question from Chairman Crenshaw, Mr. Walker stated that, with the exception of three administrative regulations that would be discussed separately, each of the Cabinet's administrative

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regulations is amended only to include a cross-reference to 902 KAR 1:400E pertaining to KRS Chapter 13B administrative hearings.

In response to a question from Chairman Crenshaw after consideration of 902 KAR 8:090, 14:070E, and 17:021E, Mr. Walker stated that: (1) the remaining administrative regulations pertain to programs of the local health departments; (2) a master administrative regulation established an administrative hearing process that complies with KRS Chapter 13B; (3) the remaining administrative regulations cross-reference 902 KAR 1:400E to ensure that all people subject to their provisions are afforded the same degree of due process that KRS Chapter 13B provides for other regulated entities; (4) the amendments to these administrative regulations have been made to ensure that: (a) the health services administrative regulations governing local health department programs are uniform; and (b) the procedures and due process required by KRS Chapter 13B is provided across the board.

In response to questions from Senator Roeding, Mr. Walker stated that: (1) only one administrative regulation, 902 KAR 1:400E, was an emergency; (2) several months ago, the Cabinet began developing administrative regulations for health services that were required to comply with KRS Chapter 13B; (3) the attorneys for the Cabinet talked with division directors, commissioners, and LRC staff; (4) the Cabinet tried to identify the hearing procedure that was needed and the administrative regulations that needed to be amended; (5) inadvertently, the Cabinet failed to file a Notice of Intent to promulgate 902 KAR 1:400, the master hearings administrative regulation; (6) although the majority of disputes between local health departments and regulated entities are resolved on the local health department level, the Cabinet wanted to: (a) develop a hearing procedure with KRS Chapter 13B protections in it; and (b) allow the local health department operation and involvement to continue; (7) although the master hearings administrative regulation was developed, agency personnel were so busy determining what administrative regulations to amend, such as the tattoo administrative regulation, the shellfish one, etc., that the notice of intent for the master hearings administrative regulation was not filed; (8) the requirements for an emergency administrative regulation established by KRS 13A.190 have been met as follows: an emergency administrative regulation is: (a) required to comply with a state law that goes into effect on July 15; and (b) designed to protect the public health because it deals with local health department programs; (9) the master administrative regulation will be reviewed by Subcommittee staff and the Attorney General's Office on a continual basis; (10) the Cabinet is happy to have that occur; and (11) is sorry it had to file an emergency administrative regulation.

Subcommittee staff stated that: (1) any administrative regulation that deals in any way with hearings will be reviewed by Subcommittee staff and with the Attorney General's Office and the appropriate agency; and (2) any required amendments will be reported to the Subcommittee.

In response to a question from Chairman Crenshaw, Mr. Walker stated that amendments of the remaining administrative regulations were restricted to the insertion of a cross reference to the master hearing administrative regulation.

In response to a question from Senator Roeding, Mr. Walker stated that the Executive Order reorganizing the Cabinet for Human Resources was cited in each of the administrative regulations because they must be uniform in their statutory authority.

In response to a question from Representative Allen, Mr. Walker stated that the administrative regulations do not contain any fee increases.

With the exception of 902 KAR 8:090, 14:070E, and 17:021E, the 902 administrative regulations and 904 KAR 2:400 were approved by the Subcommittee as a group, with Senator Roeding voting "no".

Maternal and Child Health

902 KAR 4:040. Special Supplemental Food Program for Women, Infants and Children (WIC).

Public accommodations

902 KAR 7:010. Hotel and motel code.

Local Health Departments

902 KAR 8:140. Appointment of a health officer or a health department director of a local health department.

State and Local Confinement Facilities

902 KAR 9:010. Environmental health.

Sanitation

902 KAR 10:020. Frozen food locker plants.

902 KAR 10:030. Sanitarians.

902 KAR 10:040. Kentucky youth camps.

902 KAR 10:045. Tattoo artist registration, tattoo studio certification and inspection.

902 KAR 10:050. Refuse bins.

902 KAR 10:120. Kentucky public swimming and bathing facilities regulation.

902 KAR 10:140. On-site sewage disposal system installer certification program standards.

902 KAR 10:150. Domestic septage disposal site approval procedures.

902 KAR 10:160. Domestic septage disposal site operation.

902 KAR 10:170. Septic tank servicing.

Emergency Medical Technicians

902 KAR 13:090. Disciplinary actions.

902 KAR 13:120. Emergency medical technician automatic and semiautomatic defibrillation training program.

902 KAR 13:130. Emergency medical technician maintenance and discontinuation of a preestablished peripheral intravenous (I.V.) infusion.

Emergency Medical Services and Ambulance Service Providers

902 KAR 14:070E. License procedures and fee schedule for ambulance providers. John Walker, Assistant Counsel, Cabinet for Health Services, and Robert Calhoun, Emergency Medical Services Branch, represented the Cabinet. In response to questions from Chairman Crenshaw, Mr. Calhoun stated that: (1) this administrative regulation: (a) amended the names and categories of ambulance licensing groupings to conform with HB 492, enacted during the 1996 Regular Session; and (b) incorporated KRS Chapter 13B requirements regarding hearings and actions taken in response to them; (2) this administrative regulation will not hurt ambulance providers; (3) this is the first step to getting the ambulance providers under a licensing system and makes them happy; and (4) a more specific administrative regulation will be before the Subcommittee in the future.

In response to a question from Senator Roeding, Mr. Walker stated that: (1) the reference to the Executive Order is included in the administrative regulation because the administrative regulation was promulgated while the Cabinet was the Cabinet for Health Services; and (2) the Executive Order is the authority for the Cabinet for Health Services.

Senator Roeding: (1) stated that he agreed with the General Assembly's action regarding ambulance services during the 1996 Regular Session; and (2) asked if deferring this administrative regulation would be helpful in resolving the issues raised by the Executive Order.

In response to Senator Roeding's question, Subcommittee staff stated that: (1) deferring this administrative regulation would not matter because, as an emergency administrative regulation, it is already in effect; and (2) under the provisions of KRS Chapter 13A, the Subcommittee could only request the Governor to withdraw his approval for the filing of this emergency administrative regulation.

Mr. Calhoun stated that the Cabinet needed this administrative regulation in effect because of the statutory changes in licensing categories that were enacted during the 1996 Regular Session.

Mobile Homes and recreational Vehicles Parks; Facilities Standards

902 KAR 15:010. Mobile homes.

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902 KAR 15:020. Recreational vehicles.

State Health Plan

902 KAR 17:021E. Repeal of 902 KAR 17:020. John Walker, Assistant Counsel, Cabinet for Health Services, and Karen Doyle, Staff Assistant to the Commissioner, Department For Medicaid Services, represented the Cabinet. Ms. Doyle stated that: (1) this emergency administrative regulation was promulgated at the request of the Regulations Compiler; (2) this is a clean-up of an administrative regulation that should have been repealed two years ago; (3) she realized that the: (a) Kentucky Health Policy Board is defunct as of July 15; and (b) authority for the state health plan would return to the Cabinet; (4) this was an archaic administrative regulation that is being repealed; (5) the administrative regulations that will be placed under the authority of the Cabinet will be: (a) codified in the same KAR chapter; and (b) amended to fit within the Cabinet's administrative structure; and (6) this repeal will not change anything until the 15th of July.

Subcommittee staff stated that: (1) this administrative regulation was filed as an emergency because there were two existing state health plan administrative regulations; (2) the two administrative regulations were in conflict; (3) the Kentucky Health Policy Board has had a state health plan administrative regulation for some time; and (4) the repealed administrative regulation needed to be deleted because it was in conflict with an existing administrative regulation.

Health Services and Facilities

902 KAR 20:350. Boarding homes.

Kentucky Board of Health Care Services

902 KAR 22:030. Midlevel health care practitioner.

Food and Cosmetics

902 KAR 45:005. Retail food code.

902 KAR 45:006. Kentucky bed and breakfast administrative regulation.

902 KAR 45:020. Shellfish.

902 KAR 45:040. Carbonated beverages.

902 KAR 45:080. Salvage.

902 KAR 45:100. Vending machines; food and beverages.

902 KAR 45:150. School sanitation.

Hazardous Substances

902 KAR 47:040. Cellulose insulation.

902 KAR 47:050. Ban of paint, coatings, and certain consumer products containing lead.

902 KAR 47:060. Safety of toys and children's products.

902 KAR 47:070. Standards for flammable fabrics and flammable fabric products.

Controlled Substances

902 KAR 55:010. Licensing of manufacturers and wholesalers.

902 KAR 55:070. Storage of controlled substances in an emergency medication kit in certain long-term care facilities.

Radiology

902 KAR 100:040. General provisions for specific licenses.

902 KAR 100:170. Proceedings.

Cabinet for Families and Children: Department for Social Insurance: Public Assistance

904 KAR 2:400. Establishment, review, and modification of child support and medical support orders.

The following administrative regulations were deferred to the next Subcommittee meeting, unless otherwise noted, upon agreement by the Subcommittee and the promulgating agency:

Finance and Administration Cabinet: Purchasing

200 KAR 5:302E. Delegation of authority.

Personnel Pilot Program

200 KAR 22:130E. Comprehensive Employment Manual of the Cabinet for Health Services, Department for Health Services, Division for Disability Determinations for use in the Pilot Personnel Program.

Board of Accountancy

201 KAR 1:040E. Procedure for conducting examination.

Board of Dentistry

201 KAR 8:015. Registration of dental laboratories and technicians with board.

Board of Examiners and Registration of Landscape Architects

201 KAR 10:050E. Fees.

Justice Cabinet: Charitable Gaming

500 KAR 11:001E. Definitions.

500 KAR 11:110E. Keno.

Transportation Cabinet: Department of Vehicle Regulation: Driver Improvement

601 KAR 13:090E. Medical Review Board; basis for examination, evaluation, tests.

601 KAR 13:100E. Medical standards for operators of motor vehicles.

Kentucky Board of Education: Department of Education: Office of District Support Services: School Administration and Finance

702 KAR 3:285E. School district Medicaid providers.

Department of Housing, Buildings and Construction: Heating, Ventilation, and Air Conditioning Licensing Requirements

815 KAR 8:010. Master heating, ventilation and air conditioning (HVAC) contractor licensing requirements.

815 KAR 8:020. Journeyman heating, ventilation, and air conditioning (HVAC) mechanic licensing requirements.

Judith Walden, General Counsel, represented the Department.

The Subcommittee considered these administrative regulation together. Both administrative regulations were amended to correct an address in Section 4(4).

In response to questions from Senator Kafoglis, Ms. Walden stated that: (1) the test score was 75 for the master, and 70 for a journeyman; (2) the Board determined that the scores needed to be reduced because the pass-rate was not sufficient because of the difficulty of the test; (3) most of the tests have a passing rate of 70; (4) the pass rate was approximately nine or ten percent; (5) while she has not done an analysis on why the pass rate is so low, she thinks it was low because it was a new program; (6) many people were grandfathered into the new program; (7) people trying to take the examination may not have been as well-qualified as they should have been to pass it; (8) a Board member recently took the examination, which is open book, and was almost able to pass it without using the book; (9) the Department is always working to determine how to have an appropriate test rate; (10) this amendment will more than double the number of passing applicants by reducing the required score by five points.

Subcommittee staff stated that: (1) the amendments were: (a) prepared in response to the initial staff review; and (b) received on a timely basis and are correct; (2) the Subcommittee staff will send a memorandum on procedures to agency staff explaining the procedure and notifying them that copies of amendments initiated by the agency should also be sent to Subcommittee legal staff.

In response to questions from Senator Kafoglis, Ms. Walden stated that: (1) the licensing program licenses 16,000 people; (2) 4,000 of them are master HVAC contractors who are required to have continuing education for this next year; (3) because the Department cannot currently manage the program for the remaining 12,000 journeyman, the continuing education for them will not be mandatory; (4) the statute allows, but does not require, continuing education for masters and journeymen.

In response to questions from Chairman Crenshaw, Ms. Walden stated that: (1) the Department of Housing: (a) is starting a continuing

education program for masters; (b) deleting the requirement for continuing education for journeymen; (c) will phase in a continuing education program; (d) within the last year, has acquired the ability to provide sufficient continuing education through private means for masters; and (e) believes it will be able to establish a continuing education program for journeymen; (2) the program is too expansive for the Department to administratively provide the training for such a large number of working masters; (3) the Department will: (a) train the group with the responsible charge; and (b) hopefully, require continuing education in the future for journeyman; (4) the licensing program is new, and this is the end of the first year for which there was a requirement for licensing; and (5) she does not know if the Board will make the determination to require journeyman continuing education at a later date.

Senator Kafoglis stated that: (1) the Department has the statutory authority to establish continuing education; (2) the legislation was passed to improve standards and upgrade the operations of this profession; (3) it appears that the requirements are being watered down for an exclusive arrangement; and (4) he hoped the Department will follow through and accomplish the original objectives to increase standards for the profession so that people can rely on licensed people to have the appropriate training, knowledge, and experience to perform the job in an appropriate manner.

In response to Senator Kafoglis' comments, Ms. Walden stated that: (1) the Board: (a) certainly desires to do that in a way in which it is possible; and (b) is working with various industry individuals to provide the training; (2) the industry itself is participating with the Board to provide the appropriate education; (3) once it is established throughout the state, the training can be expanded; and (4) since this is a new program, the Department has to move in steps it can achieve.

In response to a question from Chairman Crenshaw, Ms. Walden stated that: (1) she did not know what was said about applicable legislation on the floor of the General Assembly in 1994; (2) there has been a movement for many years to get an HVAC licensing program; (3) this was finally accomplished in 1994; and (4) the Department was given the next year and a half to establish the program, which has been a monumental undertaking for the Department.

In response to a question from Representative Lee, Ms. Walden stated that: (1) she thinks the Department eventually will provide continuing education for journeymen; (2) the Department needs to get everything in place and find the best administrative way to get it recorded and publicized; (3) it has taken a year to reach everyone and get them tested for licenses; (4) the Department can incrementally get there, especially if it can get the help of the Vo-Tech people who have the location resources for training; (5) the masters are monitored for continuing education, and can be expected to work to provide training for the people who work for them; (6) if masters are upgraded, they will want their employees upgraded as well; (7) there are so many more journeymen than masters that the Department cannot provide training right now; and (8) while she does not know who would pay for the continuing education of the employees, she thinks the employers may pay for it.

Representative Lee stated that: (1) the General Assembly needs to review this program occasionally to make sure there is a continuing education class for journeymen sometime in the future; (2) unless the legislature ensures that the program is ongoing, master contractors will not provide the education for journeymen if: (a) only master contractors are required to have continuing education; and (b) a fee is imposed on the companies.

In response to Representative Lee's comments, Ms. Walden stated that: (1) she understood what he said; (2) the Department began by requiring the continuing education for both masters and journeymen for licensure beginning next July; and (3) the Board and Department had to recognize they could not get this done.

Representative Lee stated that: (1) if the legislature does not keep some control or checks on this program, the legislation will be

watered-down; (2) there was a promise made to the legislators that if this bill was passed, continuing education would be a part of the program for masters and journeymen for the safety of people working in individuals' homes in hearing, ventilating, and air conditioning; and (3) if the legislature does not continue to monitor the program, a part of the legislation will have failed.

Senator Roeding stated that: (1) he congratulated the Department for going slow on continuing education; (2) after continuing education was implemented in his profession, he knows it is not an easy situation to get everything organized; (3) if he works for someone in his profession, he, rather than his employer, is required to provide his own continuing education; (4) continuing education should not be a product or mandate from the employer to the employee; (5) it must be a mandate to the individual who is working; and (6) the individual must be responsible for his own continuing education.

Senator Kafoglis: (1) stated that: (a) if the applicants cannot pass the test and are not getting continuing education, he wondered how much value the legislation has; and (2) suggested that a limited period be established during which a lower test score would be accepted and continuing education for journeymen would not be required, after which a higher test score and continuing education would be required.

In response to Senator Kafoglis' comments, Ms. Walden stated that: (1) at the present time, the administrative regulation for journeymen indicates that a journeyman is required to have continuing education this year to get licensed next year; (2) the Department has removed this requirement until it can determine whether it can fully accomplish it within this year; (3) as soon as it can, the Department can build on it and will hopefully amend the administrative regulation to require continuing education for the next year; (4) therefore, it is inappropriate for the administrative regulation to contain this requirement; (5) the Department cannot project with any certainty when it would be appropriate to require continuing education; (6) currently, the Board is trying to do today what it can do today; (7) she does not know how long the Board will need until it can provide and require the continuing education; (8) the Board could amend the administrative regulation to require the continuing education at a future date; and (9) if it still could not do it then, the administrative regulation could be amended again.

Ms. Walden agreed to Senator Kafoglis' request that this administrative regulation be deferred to permit Ms. Walden to share the Subcommittee's concerns with the Board.

Chairman Crenshaw stated that: (1) the issues raised by Senator Kafoglis should be considered during the period the administrative regulation was deferred; (2) by December, Ms. Walden should return to the Subcommittee with plans for Board action; and (3) he did not want her to come back and tell the members that she told the Board their concerns, but had not been told what it planned to do regarding implementation of the continuing education program.

Ms. Walden stated that it would be impossible to do anything with the requirements for journeymen by December.

Chairman Crenshaw stated that: (1) the Subcommittee did not want her to come back and say it was not possible and the Department and the Board still don't know when they are going to do something; (2) in December, the Subcommittee members want her to tell them the date it will be done; (3) when this bill came before the General Assembly, the concern was that protections for consumers were not as good as they could be; (4) there was an instance in which a family member had died because of improper ventilation; (5) he remembered: (a) worrying back then how to vote; (b) the decision was between: 1. causing the costs of heating and air conditioning to go up drastically, which meant that the consumer would end up with unnecessary costs; and 2. his concern over the public's safety; (6) he voted on the side of safety; (7) Ms. Walden is now before the Subcommittee stating that the General Assembly passed the law, but the Department and Board have not addressed the problem; (8) he did not think it was impossible to address the problem; and (9) there

were other professions with 10 or 12,000 members with annual continuing education requirements.

In response to Chairman Crenshaw's comments, Ms. Walden stated that: (1) in defense of Department staff, the Department had taken on an entirely new program and been extremely busy just trying to renew the people; (2) the Board felt, and the Department recommended, that in order to provide the education, they needed to do more first; (3) the Department did not have Vo-Tech on board yet; (4) the Department has an on-going masters program that will provide continuing education; (5) once that program is in place, the Department hoped to have a report by the end of the year, that will enable it to anticipate how it will be possible to increase the continuing education for journeymen; and (6) the Board, which meets once a month and does not have salaried staff, is doing the best it can.

Senator Roeding stated that: (1) he shared the Board's concern; (2) if licensing and continuing education are begun and required in the same year, there will be a backlog of people unable to get their licenses because: (a) there are 12,000 journeymen; and (b) of the administrative process involved; (3) the Department's actions have been very admirable; (4) since the legislation has a "may" in it, not a "shall", it is permissive rather than mandatory; and (5) the Department is trying to work through this and should not be hurting the people trying to help consumers fight the heat.

In response to Senator Roeding's comments, Ms. Walden stated that: (1) when this issue is discussed at the next Board meeting, it may be useful to set a future deadline for mandatory continuing education; (2) this would help encourage people to begin to take continuing education now even though it would not be required for another year; (3) the more education is looked for, the more it tends to provide for itself; and (4) the Department is trying to provide meaningful continuing education which does not exist presently.

Cabinet for Health Services: Department for Health Services: Local Health Departments

902 KAR 8:090. Promotion, transfer, and demotion of local health department employees. John Walker, Assistant Counsel, Cabinet for Health Services, and Bob Nelson, Manager, Local Health Department Personnel Program, represented the Cabinet.

Subcommittee staff stated that: (1) this administrative regulation described the provisions governing promotion, transfer, and demotion of local health department employees; (2) two other administrative regulations, 902 KAR 8:100 and 902 KAR 8:110: (a) address predisciplinary action hearings and disciplinary appeal hearings; and (b) will need to be amended later to conform to KRS Chapter 13B; and (3) this administrative regulation did not relate to hearings.

In response to a question from Representative Bruce, Mr. Nelson stated that: (1) this administrative regulation primarily establishes standards for promotion, transfer, or demotion; (2) if a person is to be promoted, the salary provisions in the administrative regulation apply, and range from three to six percent; and (3) reasons must be given for personnel actions. Mr. Walker stated that: (1) the Cabinet for Health Services administered the local health department personnel system; (2) this administrative regulation establishes standards governing promotion, transfer, and demotion within the local health department personnel system.

Senator Roeding stated that the initial staff review included a note that although the Executive Order reorganizing the Cabinet for Human Resources was not approved by the 1996 General Assembly, the Cabinet continued to cite the Executive Order as statutory authority.

In response to Senator Roeding's comments, Mr. Walker stated that: (1) the General Assembly did not approve the proposed reorganization of the Cabinet; (2) the act of the General Assembly will nullify the Executive Order effective July 15, ninety days after the sine die adjournment of the General Assembly; (3) this administrative regulation was promulgated when the Executive Order that created the two cabinets was still in effect; (4) therefore, the Cabinet was required to cite the Executive Order in order to clearly show its

authority to promulgate this administrative regulation; (5) effective July 15, another Executive Order is expected; (6) the Cabinet: (a) listened to many of the concerns expressed by the Senate and the House pertaining to the structure of the program, confidentiality, and other significant concerns established by the existing Executive Order; and (b) has developed an Executive Order to continue the split of the larger cabinet with changes in the confidentiality provisions and with other substantial differences, pursuant to the expression of legislative concerns; (7) KRS Chapter 12 requires an executive order, issued subsequent to an executive order that expired because it was not confirmed by the General Assembly, to contain substantial differences; (8) there are at least a dozen differences between the existing and the proposed executive order; (9) the differences are an attempt to reflect the legislative concerns and debate while maintaining what the Cabinets found to be effective operations in the last six months; (10) when Executive Order 95-79 expired on July 15 and a new executive order is issued, the appropriate corrections will be made to the administrative regulation; (11) the administrative regulations will remain effective beyond July 15; (12) technical corrections needed after July 15 will be made to reflect new action by the Governor to split the Cabinet; and (13) during the next regular session, the legislature will have the opportunity to approve the new executive order.

Senator Roeding stated that: (1) the legislature was concerned with many other issues other than confidentiality; (2) his concern was with the legislative intent not to pass the executive order; (3) the General Assembly did not approve the executive order; (4) since this is July 1, it seemed that these administrative regulations will be put in effect for an executive order that had not been approved by the General Assembly and did not comply with legislative intent.

In response to Senator Roeding's comments, Mr. Walker stated that: (1) the administrative regulations were: (a) not required by the Executive Order; and (b) required because KRS Chapter 13B required a uniform hearing procedure for appeals of state agency actions; (2) these administrative regulations established the required hearing procedure; (3) if the Governor decided to return to the old structure of the Cabinet, the old structure would be retained; (4) if the Governor decided to do something different, that is what will be done; and (5) if the Governor exercised his option to reorganize the Cabinet, the future reorganization will be substantially different from that rejected by the legislature during the 1996 session.

In response to questions from Chairman Crenshaw, Mr. Walker stated that: (1) the present Executive Order would remain in effect through July 15; (2) this administrative regulation related to promotions, transfers, and demotions; (3) whether the Cabinet was kept together or split, the administrative regulation will be applied; (4) the authority for promulgating this administrative hearing administrative regulation exists separately from the Executive Order; and (5) the same things will be done under either the existing or a new executive order.

Subcommittee staff stated that: (1) this administrative regulation does not deal with KRS Chapter 13B; (2) the requirements would be established regardless of whether there was an executive order; (3) the same amendments to the subject matter governed by this administrative regulation would have been made even if the Cabinet for Human Resources had not been reorganized; (4) the objection related to the fact that, unlike the expiration of an administrative regulation found deficient pursuant to KRS Chapter 13A, if the legislature does not confirm an executive order, it will not expire until July 15 following sine die adjournment of the General Assembly; (5) under KRS Chapter 13A, if an administrative regulation is disapproved, it will expire: (a) during the regular session during which it was found deficient; or (b) after sine die adjournment, if found deficient during the interim preceding a Regular Session; and (c) may not be repromulgated within 2 years; and (6) KRS Chapter 12 permits executive orders to remain in effect until July 15 even though the intent of the legislature was not to confirm the executive order.

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In response to a question from Chairman Crenshaw, Mr. Nelson stated that: (1) the basic rules are the same in how they apply promotions, transfers, and demotions; (2) the language will basically be the same this month or next month; (3) the amendments in this administrative regulation have been made to conform with KRS Chapter 13A.

In response to a question from Subcommittee staff, Mr. Walker stated that the agency would agree to deferral of this administrative regulation for a month if the Subcommittee so requested.

In response to a request from Chairman Crenshaw, Mr. Walker agreed to defer 902 KAR 8:090 to the August meeting.

Senator Roeding requested that LRC be requested to refer issues relating to the citation, as statutory authority, of the Executive Order that had not been confirmed by the General Assembly to the appropriate interim joint committee. He stated that: (1) KRS Chapter 12 allows the Executive Order to remain in effect until July 15; (2) the Subcommittee may want one of the other committees to look into whether on failure of the General Assembly to confirm an executive order, the executive order should expire, rather than remain in effect until the following July 15.

Chairman Crenshaw stated that he: (1) wanted the Cabinet to appear before the Subcommittee in August for a review of the situation as it existed then; and (2) preferred not to take action that would unnecessarily cause difficulties in the implementation of the Cabinet's duties.

Food Stamp Program

904 KAR 3:042E. Food Stamp Employment and Training Program.

Cabinet for Health Services: Department for Medicaid Services

907 KAR 1:013E. Payments for hospital inpatient services.

907 KAR 1:034E. Early and periodic screening, diagnosis, and treatment services.

907 KAR 1:035E. Payments for early and periodic screening, diagnosis, and treatment services.

907 KAR 1:140E. Alternative intermediate services for individuals with mental retardation or developmental disabilities.

907 KAR 1:715E. School-based health services.

Payment and Services

907 KAR 3:005E. Physicians' services.

907 KAR 3:010E. Reimbursement for physicians' services.

OTHER BUSINESS

Chairman Crenshaw welcomed the new members of the Subcommittee, Senators Pendleton and Roeding, the members of the Subcommittee who had been reappointed by LRC to the Subcommittee, and expressed his appreciation of their service and work.

Pursuant to KRS 13A.020(1), Representative Lee moved that the Subcommittee nominate and re-elect Representative Jesse Crenshaw as Chairman of the Administrative Regulations Review Subcommittee. Representative Bruce seconded the motion and acted as acting chairman during the action on the motion. There were no other nominations. Representative Lee moved that the election be unanimous, seconded by Representative Allen.

The Subcommittee scheduled its next meeting for August 5, 1996, at 10:00 a.m., and scheduled its September meeting for September 9.

The Subcommittee adjourned at 11:50 a.m. until August 5, 1996 at 10 a.m. in Room 149 of the State Capitol Annex.

ADMINISTRATIVE REGISTER - B1

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates B2

The Locator Index lists all administrative regulations published in VOLUME 23 of the Administrative Register from July, 1996 through June, 1997. It also lists the page number on which each administrative regulation is published, the effective date of the administrative regulation after it has completed the review process, and other action which may affect the administrative regulation. NOTE: The administrative regulations listed under VOLUME 22 are those administrative regulations that were originally published in the Volume 22 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1996 bound Volumes were published.

KRS Index B11

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 23 of the Administrative Register.

Subject Index B18

The Subject Index is a general index of administrative regulations published in VOLUME 23 of the Administrative Register, and is mainly broken down by agency.

ADMINISTRATIVE REGISTER - B2

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	22 Ky.R Page No.	Effective Date	Regulation Number	22 Ky.R Page No.	Effective Date
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VOLUME 22

The administrative regulations listed under VOLUME 22 are those administrative regulations that were originally published in the Volume 22 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1996 bound Volumes were published.

EMERGENCY ADMINISTRATIVE REGULATIONS: (Note: Emergency regulations expire 170 days from publication, or 170 days from publication plus number of days of requested extensions, or upon replacement or repeal, whichever occurs first)

200 KAR 5:021E	1778	3-15-96
Replaced	2044	7-5-96
200 KAR 5:302E	2249	5-15-96
200 KAR 22:120E	1553	1-12-96
Replaced	2191	7-5-96
200 KAR 22:130E	1966	4-1-96
201 KAR 1:040E	2250	5-2-96
201 KAR 8:430E	2252	5-15-96
201 KAR 10:050E	1967	3-22-96
201 KAR 11:400E	1446	12-22-95
Replaced		7-5-96
201 KAR 20:070E	1554	1-25-96
Replaced	2287	6-6-96
202 KAR 4:010E	1050	11-6-95
Replaced	2288	6-6-96
301 KAR 2:140E	1968	4-11-96
Withdrawn		5-30-96
500 KAR 6:110E	1555	2-14-96
Replaced		7-5-96
500 KAR 6:150E	1558	2-14-96
Replaced		7-5-96
500 KAR 6:190E	1559	2-14-96
Replaced		7-5-96
500 KAR 6:200E	1560	2-14-96
Replaced		7-5-96
500 KAR 11:001E	2253	5-15-96
500 KAR 11:110E	2255	5-15-96
601 KAR 13:090E	1971	4-15-96
601 KAR 13:100E	1973	4-15-96
702 KAR 3:285E	2257	5-15-96
704 KAR 20:084E	1271	12-4-95
Replaced	1892	6-6-96
787 KAR 1:210E	1976	4-8-96
803 KAR 2:320E	1562	2-15-96
Replaced	2063	7-5-96
803 KAR 2:425E	1567	2-15-96
Replaced	2068	7-5-96
803 KAR 2:500E	1569	2-15-96
Replaced	2070	7-5-96
803 KAR 50:010E	2259	5-15-96
806 KAR 17:066E	1779	2-29-96
Replaced	2077	7-5-96
902 KAR 1:400E	2267	5-13-96
902 KAR 14:070E	2269	5-15-96
902 KAR 17:021E	2272	4-30-96
Expires		11-17-96
904 KAR 2:015E	1571	1-30-96
Replaced	2141	7-5-96
904 KAR 2:016E	1285	12-5-95
Expired		6-19-96

904 KAR 2:116E	1447	1-4-96
Replaced	2158	7-5-96
904 KAR 3:042E	1977	4-15-96
905 KAR 1:360E	1292	11-22-95
Withdrawn		6-6-96
907 KAR 1:013E	2273	5-13-96
907 KAR 1:034E	2278	5-13-96
907 KAR 1:035E	2282	5-13-96
907 KAR 1:060E	1576	1-18-96
907 KAR 1:061E	1578	1-18-96
907 KAR 1:140E	1981	4-4-96
907 KAR 1:505E	1071	11-6-95
Expired		5-19-96
907 KAR 1:510E	1073	11-6-95
Expired		5-19-96
907 KAR 1:675E	1295	12-5-95
Expired		6-19-96
907 KAR 1:677E	1299	12-5-95
Expired		6-19-96
907 KAR 1:715E	2283	5-13-96
907 KAR 3:005E	1984	4-15-96
907 KAR 3:010E	1986	4-15-96
908 KAR 1:340E	1582	1-30-96

ORDINARY ADMINISTRATIVE REGULATIONS:

13 KAR 2:050		
Amended	2040	(See Volume 23)
31 KAR 4:030		
Amended	2041	(See Volume 23)
40 KAR 5:010	2189	(See Volume 23)
105 KAR 1:140		
Amended	1871	6-6-96
200 KAR 5:021		
Amended	2044	7-5-96
200 KAR 5:301		
Repealed	2249	5-15-96
200 KAR 22:120	2191	7-5-96
201 KAR 1:160	2192	(See Volume 23)
201 KAR 8:015		
Amended	2311	
201 KAR 8:121	2504	(See Volume 23)
201 KAR 8:150		
Amended	2312	(See Volume 23)
201 KAR 8:260		
Amended	2314	(See Volume 23)
201 KAR 8:330		
Amended	2317	(See Volume 23)
201 KAR 11:400		
Amended	2045	(See Volume 23)
201 KAR 15:010		
- Amended	2317	(See Volume 23)
201 KAR 15:030		
Amended	2318	8-1-96
201 KAR 15:040		
Amended	2319	8-1-96

ADMINISTRATIVE REGISTER - B3

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	22 Ky.R Page No.	Effective Date	Regulation Number	22 Ky.R Page No.	Effective Date
201 KAR 15:050			501 KAR 6:120		
Amended	2321	(See Volume 23)	Amended	1889	6-6-96
201 KAR 15:080			501 KAR 6:170		
Amended	2322	(See Volume 23)	Amended	1891	
201 KAR 15:090			Amended	2054	7-5-96
Amended	2323	(See Volume 23)	As Amended	2292	6-6-96
201 KAR 20:070			601 KAR 1:005		
Amended	1872		Amended	1716	
As Amended	2287	6-6-96	Amended	2029	
201 KAR 32:040	1911		As Amended	2293	6-6-96
Withdrawn		6-3-96	601 KAR 1:029		
201 KAR 32:050	1911	(See Volume 23)	Amended	1719	
201 KAR 34:010	1913	(See Volume 23)	As Amended	2295	6-6-96
202 KAR 4:010	1747		601 KAR 1:030		
As Amended	2288	6-6-96	Amended	1720	
301 KAR 2:111			As Amended	2295	6-6-96
Amended	2325	(See Volume 23)	601 KAR 1:031		
301 KAR 2:172			Amended	1724	
Amended	1874	6-6-96	As Amended	2298	6-6-96
301 KAR 2:174			601 KAR 1:040		
Amended	1877	6-6-96	Amended	1725	
301 KAR 2:178			As Amended	2299	6-6-96
Amended	1878		601 KAR 1:085		
As Amended	2289	6-6-96	Repealed	2299	6-6-96
401 KAR 50:010			601 KAR 1:090		
Amended	1686		Repealed	2299	6-6-96
Amended	2006	6-6-96	601 KAR 1:105		
401 KAR 50:033	1752	6-6-96	Repealed	2299	6-6-96
401 KAR 51:001			601 KAR 1:170		
Amended	1691		Repealed	2299	6-6-96
Amended	2010	6-6-96	601 KAR 1:200	2504	(See Volume 23)
401 KAR 51:010			702 KAR 3:041	2194	(See Volume 23)
Amended	2326		702 KAR 5:080		
Expired*		7-12-96	Amended	2056	(See Volume 23)
401 KAR 59:001			704 KAR 20:084		
Amended	1695		Amended	1892	6-6-96
Amended	2014	6-6-96	704 KAR 20:100		
401 KAR 61:001			Repealed	2301	6-6-96
Amended	1699		704 KAR 20:260		
Amended	2018	6-6-96	Amended	1894	
401 KAR 63:001			Died*		6-13-96
Amended	1703		704 KAR 20:540		
Amended	2023	6-6-96	Amended	1896	
401 KAR 65:001			As Amended	2301	6-6-96
Amended	1707		781 KAR 1:040		
Amended	2027	6-6-96	Amended	2059	(See Volume 23)
500 KAR 6:110			781 KAR 1:070		
Amended	2047	(See Volume 23)	Amended	2061	(See Volume 23)
500 KAR 6:150			803 KAR 2:320		
Amended	2049	(See Volume 23)	Amended	2063	7-5-96
500 KAR 6:190	2193	(See Volume 23)	803 KAR 2:425		
500 KAR 6:200			Amended	2068	7-5-96
Amended	2050	(See Volume 23)	803 KAR 2:500		
501 KAR 6:020			Amended	2070	7-5-96
Amended	1882	6-6-96	803 KAR 25:010		
Amended	2052	(See Volume 23)	Amended	2071	7-5-96
Amended	2331	8-1-96	806 KAR 3:160		
501 KAR 6:030			Amended	1741	
Amended	1884	6-6-96	Amended	2033	(See Volume 23)
501 KAR 6:040			806 KAR 5:025	1755	
Amended	1886	6-6-96	Amended	2035	(See Volume 23)
501 KAR 6:060			806 KAR 17:066		
Amended	1843	6-6-96	Amended	2077	7-5-96
Amended	2333	(See Volume 23)			

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Regulation Number	22 Ky.R Page No.	Effective Date	Regulation Number	22 Ky.R Page No.	Effective Date
807 KAR 5:026			902 KAR 13:090		
Amended	2114	(See Volume 23)	Amended	2406	8-1-96
807 KAR 5:062	1915	(See Volume 23)	902 KAR 13:120		
815 KAR 8:010			Amended	2408	8-1-96
Amended	2335	(See Volume 23)	902 KAR 13:130		
815 KAR 8:020			Amended	2411	8-1-96
Amended	2337	(See Volume 23)	902 KAR 15:010		
815 KAR 8:030			Amended	2415	8-1-96
Amended	2118	7-5-96	902 KAR 15:020		
815 KAR 20:020			Amended	2418	8-1-96
Amended	2119	7-5-96	902 KAR 17:020		
815 KAR 20:130			Repealed	2272	4-30-96
Amended	2339	8-1-96	902 KAR 20:350		
815 KAR 30:060			Amended	2422	8-1-96
Amended	2342	8-1-96	902 KAR 22:030		
815 KAR 35:015			Amended	2428	8-1-96
Amended	2346	8-1-96	902 KAR 45:005		
815 KAR 35:030			Amended	2432	8-1-96
Amended	2349	(See Volume 23)	902 KAR 45:006		
900 KAR 2:020			Amended	2445	8-1-96
Amended	2122	7-5-96	902 KAR 45:020		
900 KAR 2:060			Amended	2450	8-1-96
Amended	2124		902 KAR 45:040		
Expired*		7-5-96	Amended	2455	8-1-96
902 KAR 4:040			902 KAR 45:080		
Amended	2352	8-1-96	Amended	2459	8-1-96
902 KAR 7:010			902 KAR 45:100		
Amended	2355	8-1-96	Amended	2463	8-1-96
902 KAR 8:090			902 KAR 45:150		
Amended	2359		Amended	2469	8-1-96
902 KAR 8:140			902 KAR 47:040		
Amended	2360	8-1-96	Amended	2472	8-1-96
902 KAR 9:010			902 KAR 47:050		
Amended	2362	8-1-96	Amended	2474	8-1-96
902 KAR 10:020			902 KAR 47:060		
Amended	2365	8-1-96	Amended	2477	8-1-96
902 KAR 10:030			902 KAR 47:070		
Amended	2367	8-1-96	Amended	2478	8-1-96
902 KAR 10:040			902 KAR 55:010		
Amended	2369	8-1-96	Amended	2480	8-1-96
902 KAR 10:045			902 KAR 55:030		
Amended	2373	8-1-96	Amended	1900	
902 KAR 10:050			As Amended	2302	6-6-96
Amended	2376	8-1-96	902 KAR 55:070		
902 KAR 10:120			Amended	2481	8-1-96
Amended	2378	8-1-96	902 KAR 100:040		
902 KAR 10:140			Amended	2483	8-1-96
Amended	2392	8-1-96	902 KAR 100:170		
902 KAR 10:150			Amended	2490	8-1-96
Amended	2394	8-1-96	904 KAR 2:015		
902 KAR 10:160			Amended	2141	7-5-96
Amended	2399	8-1-96	904 KAR 2:016		
902 KAR 10:170			Amended	2146	7-5-96
Amended	2403	8-1-96	904 KAR 2:055		
902 KAR 13:010			Amended	2153	7-5-96
Amended	2125	(See Volume 23)	904 KAR 2:116		
902 KAR 13:020			Amended	2158	7-5-96
Amended	2127	(See Volume 23)	904 KAR 2:400		
902 KAR 13:050			Amended	2495	8-1-96
Amended	2129	(See Volume 23)	904 KAR 3:020		
902 KAR 13:070			Amended	1901	6-6-96
Amended	2136	(See Volume 23)	904 KAR 3:060		
902 KAR 13:080			Amended	2162	7-5-96
Amended	2138	(See Volume 23)			

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Regulation Number	22 Ky.R Page No.	Effective Date	Regulation Number	22 Ky.R Page No.	Effective Date
904 KAR 3:070					
Amended	2165	7-5-96			
906 KAR 1:060					
Amended	2169	7-5-96			
906 KAR 1:080					
Amended	2171	7-5-96			
906 KAR 1:100					
Amended	2174	7-5-96			
907 KAR 1:060					
Amended	2497				
907 KAR 1:061					
Amended	2499				
907 KAR 1:320					
Amended	2076	7-5-96			
907 KAR 1:505					
Amended	1906	6-6-96			
907 KAR 1:510					
Amended	1908	6-6-96			
907 KAR 1:560	2195	7-5-96			
907 KAR 1:671					
Amended	2178	7-5-96			
907 KAR 1:672	2198	7-5-96			
907 KAR 1:673	2201	7-5-96			
907 KAR 1:675	1916				
Amended	2304	7-5-96			
907 KAR 1:677	1920				
Amended	2307	7-5-96			
908 KAR 1:340	2512	(See Volume 23)			
908 KAR 2:060					
Amended	1909	6-6-96			

*Statement of Consideration Not Filed by Deadline

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Regulation Number	23 Ky.R Page No.	Effective Date	Regulation Number	23 Ky.R Page No.	Effective Date
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VOLUME 23

EMERGENCY ADMINISTRATIVE REGULATIONS: (Note: Emergency regulations expire 170 days from publication, or 170 days from publication plus number of days of requested extensions, or upon replacement or repeal, whichever occurs first)

20 KAR 1:081E	320	7-15-96
31 KAR 4:040E	44	6-13-96
31 KAR 5:010E	45	6-13-96
101 KAR 2:100E	46	5-23-96
101 KAR 3:010E	52	5-23-96
200 KAR 5:011E	320	7-12-96
201 KAR 1:045E	58	5-22-96
201 KAR 1:130E	59	5-22-96
201 KAR 12:082E	321	7-1-96
201 KAR 12:200E	324	7-1-96
302 KAR 3:010E	325	7-15-96
302 KAR 78:020E	61	6-5-96
307 KAR 5:010E	327	7-15-96
401 KAR 50:035E	62	6-14-96
415 KAR 1:050E	328	7-3-96
415 KAR 1:060E	330	7-3-96
415 KAR 1:070E	333	7-3-96
415 KAR 1:080E	336	7-3-96
415 KAR 1:090E	340	7-3-96
415 KAR 1:100E	343	7-3-96
415 KAR 1:110E	344	7-3-96
415 KAR 1:114E	348	7-3-96
415 KAR 1:120E	352	7-3-96
415 KAR 1:125E	359	7-3-96
603 KAR 5:330E	366	7-12-96
701 KAR 5:020E	80	6-14-96
701 KAR 5:051E	81	6-14-96
701 KAR 5:055E	82	6-14-96
701 KAR 5:086E	84	6-14-96
701 KAR 5:090E	85	6-14-96
702 KAR 1:080E	86	6-14-96
702 KAR 7:065E	87	6-14-96
703 KAR 3:205E	89	6-14-96
704 KAR 20:305E	367	6-28-96
704 KAR 20:475E	370	6-28-96
707 KAR 1:180E	91	6-14-96
787 KAR 1:200E	371	6-26-96
803 KAR 25:089E	372	6-28-96
804 KAR 13:010E	373	7-8-96
806 KAR 5:060E	375	7-15-96
806 KAR 17:100E	376	7-15-96
806 KAR 17:120E	378	7-15-96
806 KAR 17:130E	379	7-15-96
806 KAR 18:060E	382	7-15-96
900 KAR 6:010E	383	7-11-96
900 KAR 6:020E	390	7-11-96
900 KAR 6:030E	391	7-11-96
900 KAR 6:040E	392	7-11-96
902 KAR 16:011E	393	7-12-96
902 KAR 17:030E	394	7-11-96
902 KAR 17:040E	395	7-11-96
902 KAR 20:320E	398	6-16-96
902 KAR 105:070E	98	6-12-96
902 KAR 115:020E	99	6-12-96
904 KAR 2:470E	410	7-12-96

905 KAR 1:320E	411	7-12-96
905 KAR 1:360E	100	6-6-96
905 KAR 2:100E	416	7-12-96
907 KAR 1:022E	104	6-13-96
907 KAR 1:025E	109	6-13-96
907 KAR 3:020E	421	7-28-96
909 KAR 1:005E	423	7-11-96

ORDINARY ADMINISTRATIVE REGULATIONS:

11 KAR 5:130		
Amended	158	
11 KAR 8:030		
Amended	159	
11 KAR 12:050		
Amended	161	
11 KAR 12:070		
Amended	162	
13 KAR 2:050		
As Amended	116	7-5-96
13 KAR 2:060		
Amended	164	
13 KAR 2:070	1049	
20 KAR 1:080		
Repealed	320	7-15-96
31 KAR 4:030		
As Amended	116	7-5-96
40 KAR 1:040	206	
40 KAR 1:050	207	
40 KAR 1:060	208	
40 KAR 1:070	209	
40 KAR 5:010		
As Amended	119	7-5-96
103 KAR 18:050		
Amended	461	
104 KAR 1:020		
Amended	166	
200 KAR 5:010		
Repealed	712	7-12-96
200 KAR 15:010		
Amended	462	
200 KAR 22:130	210	
201 KAR 1:040		
Amended	169	
201 KAR 1:045		
Amended	464	
201 KAR 1:130		
Amended	465	
201 KAR 1:160		
As Amended	122	7-5-96
201 KAR 8:120		
Repealed	424	8-1-96
201 KAR 8:121		
As Amended	424	8-1-96
201 KAR 8:150		
- As Amended	424	8-1-96
201 KAR 8:260		
As Amended	426	8-1-96
201 KAR 8:330		
As Amended	427	8-1-96

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Regulation Number	23 Ky.R Page No.	Effective Date	Regulation Number	23 Ky.R Page No.	Effective Date
201 KAR 8:430	211		401 KAR 31:160		
201 KAR 10:050			Amended	546	
Amended	170		401 KAR 31:170		
201 KAR 11:400			Amended	550	
As Amended	122	7-5-96	401 KAR 32:005	1067	
201 KAR 15:010			401 KAR 32:010		
As Amended	428	8-1-96	Amended	559	
201 KAR 15:050			401 KAR 32:020		
As Amended	428	8-1-96	Amended	562	
201 KAR 15:060			401 KAR 32:030		
Repealed	428	8-1-96	Amended	564	
201 KAR 15:080			401 KAR 32:040		
As Amended	429	8-1-96	Amended	567	
201 KAR 15:090			401 KAR 32:050		
As Amended	429	8-1-96	Amended	569	
201 KAR 15:100			401 KAR 32:100		
Repealed	428	8-1-96	Amended	573	
201 KAR 22:031			401 KAR 33:005	1080	
Amended	171		401 KAR 33:010		
201 KAR 22:106			Amended	577	
Amended	173		401 KAR 34:005	1093	
201 KAR 22:135			401 KAR 34:010		
Amended	175		Amended	579	
201 KAR 31:060	213		401 KAR 34:020		
201 KAR 32:050			Amended	581	
As Amended	123	7-5-96	401 KAR 34:050		
201 KAR 32:060	215		Amended	586	
201 KAR 34:010			401 KAR 34:060		
As Amended	125	7-5-96	Amended	589	
301 KAR 1:201			401 KAR 34:070		
Amended	468		Amended	597	
301 KAR 2:111			401 KAR 34:080		
As Amended	430	8-1-96	Amended	603	
301 KAR 2:176	217		401 KAR 34:090		
301 KAR 3028			Amended	606	
Amended	471		401 KAR 34:100		
301 KAR 4:200			Amended	613	
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Amended	487		Amended	629	
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Amended	490		Amended	635	
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Amended	492		Amended	640	
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401 KAR 31:030			Amended	649	
Amended	509		401 KAR 34:245	1105	
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401 KAR 35:050			Amended	943	
Amended	687		401 KAR 38:060		
401 KAR 35:060			Amended	949	
Amended	690		401 KAR 38:070		
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Amended	694		401 KAR 38:080		
401 KAR 35:080			Amended	959	
Amended	701		401 KAR 38:090		
401 KAR 35:090			Amended	961	
Amended	703		401 KAR 38:100		
401 KAR 35:100			Amended	965	
Amended	710		401 KAR 38:150		
401 KAR 35:120			Amended	968	
Amended	717		401 KAR 38:160		
401 KAR 35:180			Amended	970	
Amended	722		401 KAR 38:170		
401 KAR 35:190			Amended	972	
Amended	724		401 KAR 38:190		
401 KAR 35:200			Amended	974	
Amended	731		401 KAR 38:250		
401 KAR 35:210			Amended	976	
Amended	735		401 KAR 38:500		
401 KAR 35:230			Amended	978	
Amended	738		401 KAR 39:005	1192	
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401 KAR 35:250			Amended	980	
Amended	742		401 KAR 39:110		
401 KAR 35:275			Amended	982	
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401 KAR 35:280			Amended	983	
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Amended	1000		806 KAR 3:160		
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503 KAR 4:040	1286		Amended	1024	
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603 KAR 2:015			Amended	1027	
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704 KAR 20:052	1292		908 KAR 1:300		
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15.025	40 KAR 1:040		704 KAR 20:305E
	40 KAR 1:050		704 KAR 20:475E
	40 KAR 1:060		704 KAR 20:670
	40 KAR 1:070	161.030	704 KAR 20:052
17.165	905 KAR 2:100E		704 KAR 20:305E
18A.030	101 KAR 2:100E		704 KAR 20:475E
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18A.155	101 KAR 3:010E	161.770	701 KAR 5:090E
18A.195	101 KAR 2:100E	161.790	701 KAR 5:090E
18A.430	200 KAR 22:130	164.020	13 KAR 2:060
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61.394	101 KAR 2:100E	164.769	11 KAR 8:030
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141.330	103 KAR 18:050	164A.330	11 KAR 12:050
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150.010	301 KAR 1:201	164A.335	11 KAR 12:070
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150.105	301 KAR 2:176	167.150	707 KAR 1:180E
150.170	301 KAR 1:201	174.400-174.425	601 KAR 1:025
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150.470	301 KAR 1:201	189.337	603 KAR 4:040
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156.132	701 KAR 5:051E		501 KAR 6:130
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156.200	702 KAR 3:130	199.898	905 KAR 2:100E
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158.030	707 KAR 1:180E	205.245	902 KAR 16:011E
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158.100	707 KAR 1:180E		907 KAR 1:025E
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214.032	902 KAR 2:060	401 KAR	34:287
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