

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

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

RELATES TO: KRS 224.01, 224.10, 224.40, 224.50

STATUTORY AUTHORITY: KRS 224.10-220

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

Section 1. Submittal of Permit Applications and Registrations.

(1) The official date of receipt for documents associated with a special permit application or registration shall be the date the document is stamped received by the Division of Waste Management.

(2) The applicant or registrant shall submit all information required in the applicable permit application~~[have the burden of establishing that the application or registration is in compliance with all requirements of KRS Chapter 224 and 401 KAR Chapters 30 and 45].~~

Section 2. Administrative Completeness Determination.

(1)

(a) No application or registration shall be reviewed until the cabinet has determined that the application or registration is administratively complete. A determination by the cabinet that an application or registration is administratively complete means that the application or registration contains the major elements required by the applicable forms~~[KRS Chapter 224 and 401 KAR Chapters 30 and 45 that are necessary to allow meaningful review by the cabinet].~~

(b) An application or registration shall not be deemed administratively complete if one (1) or more major components are found to be absent from the application or registration, which, by virtue of their absence, would require that the permit be denied. A determination that an application or registration is administratively complete shall not mean ~~[that the application is complete in every detail, nor shall it mean]~~ that any aspect of the application is technically sufficient~~[or approvable].~~

(2) Within forty-five (45) calendar days of receipt of the application or registration the cabinet shall provide written notice to the applicant or registrant as to the administrative completeness of the application or registration.

(a) ~~[If the application or registration is determined to be administratively complete, the cabinet shall notify the applicant or registrant in writing that the review and determination period provided by Section 3 of this administrative regulation has commenced.]~~

~~[(b)]~~ If the application or registration is determined to be incomplete, the cabinet shall notify the applicant or registrant of all the deficiencies that render it administratively

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

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

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

2.

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

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

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

(1) All administratively complete permit applications and registrations shall be reviewed and a determination made to issue, acknowledge, or deny the permit within the following timetables:

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

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

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

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

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

(f) Permit transfer: 180 calendar days.

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

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

(2) The timetables specified in subsection (1) ~~[of this section]~~ may be extended at the initiative of either the cabinet or the applicant or registrant. The purpose and period of the extension shall be in writing and, if agreed to by both parties, shall be signed by both the cabinet and the applicant or registrant. The agreement to extend the timetable shall become part of the cabinet's permit or registration file.

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

(1) From the date the cabinet mails or hand delivers a notice of deficiency until the date the Division of Waste Management stamps as received a completed~~[complete]~~ response to the deficiencies. If a notice of deficiency is sent to an applicant or registrant, the applicant or registrant shall have 180 calendar days to respond to the notice of deficiency. Failure to respond to a notice of deficiency within 180 calendar days shall be grounds for denial of the permit;

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

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

Section 5. Timetable Extensions.

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

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

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

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

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

~~[(2)]~~

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

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

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

REBECCA GOODMAN, Secretary

APPROVED BY AGENCY: August 24, 2023

FILED WITH LRC: August 24, 2023 at 4:00 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2023, at 5:30 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky 40601. The public hearing can also be accessed at the following website address <https://us02web.zoom.us/j/86146637051> or can be accessed toll free by telephone: 833-548-0282 using Meeting ID code: 861 4663 7051 and Passcode 139147. Please note that registration is required to participate in this hearing. You must either email your name and mailing address to Michael.Mullins@ky.gov or mail this information to Michael Mullins, Department for Environmental Protection, Office of the Commissioner, 300 Sower Boulevard, Frankfort, Kentucky 40601. Please put "Land Application of Biosolids" as the subject line, and state in the body of the message if you plan to speak during the hearing. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays 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 administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2023. 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: Michael Mullins, Env Scientist Consultant II, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes timetables for the review and determination of special waste permit applications and registrations.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to establish review timetables for the permits in this chapter.

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

The authorizing statutes provides the department the authority to promulgate administrative regulations and administer special waste programs. This administrative regulation establishes the permit review timetables for all of the special waste permitting actions.

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

This administrative regulation establishes the permit review timetables for special waste permitting actions in Chapter 45.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

The amendment clarifies that the timetables and process established in this administrative regulation do not apply to the management of biosolids and makes other corrections to comply with the drafting requirements of KRS Chapter 13A.

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

This amendment is necessary to direct applicants for the land application of biosolids to 401 KAR 45:105 where the permitting process and review timetables are established.

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

The amendment conforms to the authorizing statutes by directing the applicant for a biosolid land application permit to 401 KAR 45:105 for the permitting process and requirements.

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

This amendment will direct applicants to 401 KAR 45:105 for the permitting timetables that are applicable to the management of biosolids.

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

The total universe of potential impacted entities is 399. 394 of those are wastewater treatment plants that either already have a permit (54) or could get a permit in the future (340). The remaining 5 are private entities (contractors) that already have permits.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the

change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

The regulated entities will only need to review 401 KAR 45:105 for permitting process and review timetables.

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

There will be no additional cost to the regulated entity to comply with this amendment. The same application fee will apply to this process and the costs of complying with 401 KAR 45:105 will be either the same or less than the current process.

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

The entities will benefit by having an administrative regulation that contains nearly all of the information related to the management of biosolids.

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

(a) Initially:

There will not be a cost to the agency to implement this amendment

(b) On a continuing basis:

There will not be a cost to the agency to implement this amendment on a continuing basis

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

The funding source for this program will be a mix of restricted funds from the fees charged for application review and general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

There will not be a need to increase fees or funding associated with this amendment. The agency currently regulates wastewater treatment plant sludges and will simply use the current personnel and funding to implement this new process.

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

There are not any new fees associated with this administrative regulation or the amendment. The current fee that is charged for application review (401 KAR 45:250) will continue to be applied to biosolid applications under this new process.

(9) TIERING: Is tiering applied?

No. All entities that submit an application for a biosolids permit will be reviewed in accordance with the application information submitted and will not be treated differently.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

This administrative regulation will impact not only the Department for Environmental Protection's Division of Waste Management but also local governments that have wastewater treatment plants that generate sludge.

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

KRS 224.10-100(28), 224.40-305, 224.10-220.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

This administrative regulation will not generate any additional revenue. This administrative regulation is related to review timetables for permits and does not generate any funds. The current application fees (401 KAR 45:250) will continue after these amendments are effective.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

This administrative regulation will not generate any additional revenue. The current application fees in 401 KAR 45:250 will continue after these amendments are effective.

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

There should not be an additional cost associated with implementation of these amendments. The administrative regulation establishes timetables for review of permits and does not impact costs.

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

There should not be an additional cost associated with implementation of these amendments. Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

Revenues (+/-): There are no anticipated increases in revenues related to these amendments.

Expenditures (+/-): There are no anticipated increases in expenditures related to these amendments.

Other Explanation:

The new process related to the implementation of SB 213 from the 2023 Legislative Session changed the process but didn't change any of the fees associated with the management of biosolids.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

The Cabinet does not anticipate there to be a significant cost savings with the implementation of these amendments.

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

The Cabinet does not anticipate there to be a significant cost savings with the implementation of these amendments.

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

The addition of the definition of biosolids will not result in a cost increase for the regulated entity.

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

The addition of the definition of biosolids will not result in a cost increase for the regulated entity.

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

Cost Savings (+/-): There is not a predicted change in costs with this proposal.

Expenditures (+/-): There is not expected to be a change in expenditures with this proposal.

Other Explanation:

The amendment to this administrative regulation is simply indicates that the timetables for permit review do not apply to the permit review of biosolids. Those timeframes are in 401 KAR 45:105. Therefore, there is not an anticipated impact to costs or revenues with this amendment.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below.

"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This proposal will not have a major economic impact as defined KRS 13A.010(13).