

401 KAR 39:005. Definitions for 401 KAR Chapter 39.

RELATES TO: KRS 224.1, 224.10, 224.46, 224.50-545(2)(a), 322.010, 40 C.F.R. Parts 260, 261, 262, 268, 270

STATUTORY AUTHORITY: KRS 224.10-100, 224.46

CERTIFICATION STATEMENT:

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.46-530(2) authorizes the cabinet to promulgate administrative regulations to establish standards for the management of hazardous waste. This administrative regulation establishes definitions for 401 KAR Chapter 39. Some terms do not have a federal counterpart, and have been added to clarify requirements and provisions of KRS Chapter 224 and 401 KAR Chapter 39.

Section 1. Definitions. Except as established in this section, definitions for 401 KAR Chapter 39 shall be as established in 40 C.F.R. 260.10.

(1) "Acute hazardous waste" is defined by 40 C.F.R. 260.10 and also includes the hazardous wastes listed in 401 KAR 39:060, Section 3(4), Table I with the assigned hazard code of (H).

(2) "Administrator":

(a) Means "cabinet", as defined by KRS 224.1-010(8); or

(b) Is defined by 40 C.F.R. 260.10 as referenced in:

1. 40 C.F.R. 261.10;
2. 40 C.F.R. 261.11;
3. 40 C.F.R. 261.30(b);
4. 40 C.F.R. 261, Appendix IX;
5. 40 C.F.R. 262, Subpart H;
6. 40 C.F.R. 268.5;
7. 40 C.F.R. 268.6;
8. 40 C.F.R. 268.13;
9. 40 C.F.R. 268.40(b);
10. 40 C.F.R. 268.42(b);
11. 40 C.F.R. 268.44(a), (d), and (e);
12. 40 C.F.R. 270.2;
13. 40 C.F.R. 270.5;
14. 40 C.F.R. 270.10(e)(2) and (3);
15. 40 C.F.R. 270.10(f)(3); and
16. 40 C.F.R. 270.32(b)(2) and (3).

(3) "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.

(4) "Agency" means "cabinet" as defined by KRS 224.1-010(8).

(5) "Application" is defined by 40 C.F.R. 270.2, and includes the forms for applying for a permit, including any additions, revisions or modifications and any narrative and drawings required by 401 KAR Chapter 39, including Parts A and B of the permit application.

(6) "Appropriate regional administrator" means "state director".

(7) "Appropriate regional EPA office" means "cabinet" as defined by KRS 224.1-010(8).

(8) "Assistant administrator for solid waste and emergency response" means "cabinet" as defined by KRS 224.1-010(8).

(9) "Burn" means:

(a) Burning for energy recovery or destruction; or

(b) Processing for materials recovery or as an ingredient.

(10) "Cabinet" is defined by KRS 224.1-010(8).

(11) "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.

(12) "Closure" is defined by KRS 224.1-010(4).

(13) "Closure plan" means the plan for closure prepared in accordance with the requirements of 401 KAR 39:090, Sections 1 through 4.

(14) "Container" is defined by 40 C.F.R. 260.10, and includes transport vehicles that are containers themselves, including tank trucks, tanker-trailers, rail tank cars, and containers placed on or in a transport vehicle.

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

(a) The concentration of that substance in the groundwater to exceed the maximum contaminant level established in 401 KAR 30:031, 401 KAR 47:030, Sections 5 and 6, or 401 KAR 39:090, Section 1;

(b) An increase in the concentration of that substance in the groundwater where the existing concentration of that substance exceeds the maximum contaminant level established in 401 KAR 30:031, 401 KAR 47:030, Sections 5 and 6 or 401 KAR 39:090, Section 1; or

(c) A significant increase above the background levels established in 401 KAR 100:030, for substances that do not have an established maximum contamination level.

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

(17) "Contingency plan" is defined by 40 C.F.R. 260.10, and includes financial planning to identify resources for initiation of required action.

(18) "Corrective action management unit" or "CAMU" means an area within a facility:

(a) Designated by the cabinet pursuant to 401 KAR 39:090, Section 1, for the purpose of implementing corrective action requirements established in 401 KAR 39:090, KRS 224.46-520, KRS 224.46.530, and RCRA 3008(h); and

(b) Is only used for the management of remediation wastes pursuant to implementing the corrective action requirements at the facility.

(19) "Department of Transportation" or "DOT" means the United States Department of Transportation.

(20) "Director" means:

(a) "Cabinet" as defined by KRS 224.1-010(8); or

(b)

1. The director of the Federal Register as referenced in 40 C.F.R. 260.11;

2. The director of the U.S. DOT Office of Pipeline and Hazardous Materials Technology as referenced in 40 C.F.R. 261.21(a)(3)(ii)(A);

3. The director of the EPA Office of Resource Conservation and Recovery as referenced in 40 C.F.R. 262.21;

4. The director of the EPA's Collection Strategies Division as referenced in 40 C.F.R. 262, Appendix; and

5. The director of the U.S. DOT Office of Hazardous Materials Regulations as referenced in 40 C.F.R. 263.30(c)(2) and 40 C.F.R. 279.43(c)(3)(ii).

(21) "Disposal" is defined by KRS 224.1-010(9).

(22) "Engineer" is defined by KRS 322.010(2).

(23) "Environmental Protection Agency" or "EPA":

(a) Means "cabinet" as defined by KRS 224.1-010(8); or

(b) Means the Federal Environmental Protection Agency:

1. If used in the phrases:

a. "EPA or authorized state";

- b. "EPA ID number";
 - c. "EPA hazardous waste codes";
 - d. "EPA form";
 - e. "EPA Region";
 - f. "EPA Acknowledgement of Consent";
 - g. "EPA test methods";
 - h. "EPA guidance"; and
 - i. "EPA publication; and
2. As referenced in:
- a. 40 C.F.R. 260.1;
 - b. 40 C.F.R. 260.2
 - c. 40 C.F.R. 260.10 related to the definitions of:
 - (i) "Administrator";
 - (ii) "AES filing compliance date";
 - (iii) "Electronic import-export reporting compliance date";
 - (iv) "Electronic manifest";
 - (v) "Electronic manifest system";
 - (vi) "EPA hazardous waste number";
 - (vii) "EPA identification number"; and
 - (viii) "Replacement unit";
 - d. 40 C.F.R. 260.11(a) and (f);
 - e. 40 C.F.R. 261.1(a)(2);
 - f. 40 C.F.R. 261.1(b)(2)(i);
 - g. 40 C.F.R. 261.4(b)(11)(ii);
 - h. 40 C.F.R. 261.32(a) related to the listing of K069 only;
 - i. 40 C.F.R. 261.39(a)(5);
 - j. 40 C.F.R. 261.41;
 - k. 40 C.F.R. 261, Appendix IX;
 - l. 40 C.F.R. 262.20(a)(3)(ii);
 - m. 40 C.F.R. 262.21;
 - n. 40 C.F.R. 262.24(a)(3);
 - o. 40 C.F.R. 262.24(g);
 - p. 40 C.F.R. 262.25;
 - q. 40 C.F.R. 262.81 to 40 C.F.R. 262.84;
 - r. 40 C.F.R. 262, Appendix;
 - s. 40 C.F.R. 262, Subpart H;
 - t. 40 C.F.R. 263.20(a), (c), (e), and (f);
 - u. 40 C.F.R. 263, Subpart B;
 - v. 40 C.F.R. 264.12(a);
 - w. 40 C.F.R. 264.71(a)(2)(v);
 - x. 40 C.F.R. 264.71(a)(3);
 - y. 40 C.F.R. 264.71(d);
 - z. 40 C.F.R. 264.71(f)(4) and (5);
 - aa. 40 C.F.R. 264.71(h)(3);
 - bb. 40 C.F.R. 264.71(j);
 - cc. 40 C.F.R. 264.1082(c)(4)(ii), the second occurrence only stating "an equivalent method of treatment approved by EPA";
 - dd. 40 C.F.R. 265.12(a);
 - ee. 40 C.F.R. 265.71(a)(2)(v);
 - ff. 40 C.F.R. 265.71(a)(3);
 - gg. 40 C.F.R. 265.71(d);
 - hh. 40 C.F.R. 265.71(f)(4) and (5);

- ii. 40 C.F.R. 265.71(h)(3);
- jj. 40 C.F.R. 265.71(j);
- kk. 40 C.F.R. 265.1083(c)(4)(ii), the second occurrence only stating "an equivalent method of treatment approved by EPA";
- ll. 40 C.F.R. 266.103;
- mm. 40 C.F.R. 266, Appendix IX;
- nn. 40 C.F.R. 267.71(d);
- oo. 40 C.F.R. 267.143(f)(2)(i)(A)(1);
- pp. 40 C.F.R. 268.1(e)(3);
- qq. 40 C.F.R. 268.2(j);
- rr. 40 C.F.R. 268.7(e);
- ss. 40 C.F.R. 270.1(a)(1);
- tt. 40 C.F.R. 270.1(c)(7);
- uu. 40 C.F.R. 270.2;
- vv. 40 C.F.R. 270.5;
- ww. 40 C.F.R. 270.6;
- xx. 40 C.F.R. 270.10(e)(2);
- yy. 40 C.F.R. 270.11(a)(3);
- zz. 40 C.F.R. 270.12;
- aaa. 40 C.F.R. 270.32(a) and (c);
- bbb. 40 C.F.R. 270.51;
- ccc. 40 C.F.R. 270.72(a)(5);
- ddd. 40 C.F.R. 270.72(b)(5);
- eee. 40 C.F.R. 124.6(e);
- fff. 40 C.F.R. 124.10(c)(1)(ii); and
- ggg. 40 C.F.R. 273.32(a)(3).

(24) "EPA Environmental Appeals Board" means "cabinet" as defined by KRS 224.1-010(8).

(25) "EPA Regional Administrator" means "cabinet" as defined by KRS 224.1-010(8).

(26) "EPA regional office" means "cabinet" as defined by KRS 224.1-010(8).

(27) "Existing boiler or industrial furnace" means a boiler or industrial furnace that on or before August 21, 1991 was either in operation burning, or processing hazardous waste, including the ancillary facilities to burn or to process the hazardous waste, or for which construction, including the ancillary facilities to burn or to process the hazardous waste, has commenced.

(28) "Facility" is defined by 40 C.F.R. 260.10, and includes sites implementing corrective action pursuant to KRS 224.46-520 and KRS 224.46-530.

(29) "Facility mailing list" means the mailing list for a facility maintained in accordance with 401 KAR 39:060, Section 5.

(30) "Federal Register":

- (a) Means the United States Federal Register; or

- (b) Means the "Administrative Register of Kentucky" as defined by KRS 13A.050, as referenced in 40 C.F.R. 260.20(c) and (e).

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

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

(33) "Generator" is defined by KRS 224.1-010(12).

(34) "Governing body" is defined by KRS 224.1-010(45).

- (35) "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.
- (36) "Hazardous constituent" is defined by KRS 224.1-010(41).
- (37) "Hazardous debris" means debris that contains a hazardous waste listed in, or that exhibits a characteristic of hazardous waste identified in 401 KAR 39:060, Section 3.
- (38) "Hazardous waste" is defined by KRS 224.1-010(30)(b) and implemented through the criteria established in 40 C.F.R. 261.3.
- (39) "Hazardous waste constituent" means a constituent that caused the cabinet or EPA to list the hazardous waste, or a constituent listed in 401 KAR 39:060, Section 3 and 40 C.F.R. Part 261, Subpart D.
- (40) "Hazardous waste management unit" is defined by 40 C.F.R. 260.10, and includes an 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.
- (41) "Hazardous waste site or facility" means "hazardous waste management facility" as defined by 40 C.F.R. 270.2.
- (42) "Inactive portion" means that portion of a hazardous waste site or facility that was not operated after November 19, 1980.
- (43) "Industrial solid waste" is defined by KRS 224.1-010(30)(a)3.
- (44) "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.
- (45) "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.
- (46) "LDR" means land disposal restrictions.
- (47) "Manifest" is defined by KRS 224.1-010(36) and includes:
- (a)
 1. The shipping document EPA Form 8700-22 as referenced in 40 C.F.R. 260.10; and
 2. If applicable, EPA Form 8700-22A as referenced in 40 C.F.R. 260.10; or
 - (b) The electronic manifest.
- (48) "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.
- (49) "Municipal solid waste" is defined by KRS 224.1-010(30)(a)4.
- (50) "Operator" is defined by 40 C.F.R. 260.10, and includes any operation of a facility on-site or off-site, and any private contractor conducting operational activities at a federal facility.
- (51) "Owner" is defined by 40 C.F.R. 260.10, and includes any person who owns an on-site or off-site facility, or any part of a facility.
- (52) "Permittee" means any person holding a valid permit issued by the cabinet or EPA to manage, treat, store, or dispose of hazardous waste.
- (53) "Person" is defined by KRS 224.1-010(16).
- (54) "Post-closure monitoring and maintenance" is defined by KRS 224.1-010(17).
- (55) "Professional engineer" is defined by KRS 322.010(3).
- (56) "Professional land surveyor" is defined by KRS 322.010(9).
- (57) "Publicly owned treatment works" or "POTW" is defined by KRS 224.1-010(18).
- (58) "Regional Administrator":
- (a) Means "cabinet", as defined by KRS 224.1-010(8); or
 - (b) Is defined by 40 C.F.R. 260.10 as referenced in:

1. 40 C.F.R. 261, Appendix IX;
2. Note 1 to 40 C.F.R. 261.196;
3. 40 C.F.R. 262, Appendix, Item 18;
4. Note to 40 C.F.R. 264.196;
5. 40 C.F.R. 264.551 and 40 C.F.R. 264.552 related to CAMUs designated under RCRA Section 3008(h);
6. 40 C.F.R. 264.553 related to temporary units designated under RCRA Section 3008(h);
7. Note to 40 C.F.R. 265.196;
8. 40 C.F.R. 270.2 related to the definitions of:
 - a. "CAMU" under RCRA 3008(h);
 - b. "Director";
 - c. "Major facility"; and
 - d. "State/EPA agreement";
9. 40 C.F.R. 270.5;
10. 40 C.F.R. 270.10(e)(4);
11. 40 C.F.R. 270.10(f)(2);
12. 40 C.F.R. 270.10(g)(1)(i) and (iii);
13. 40 C.F.R. 270.11(a)(3)(ii);
14. 40 C.F.R. 270.51;
15. 40 C.F.R. 124.2;
16. 40 C.F.R. 124.3(c);
17. 40 C.F.R. 124.4(a)(2);
18. 40 C.F.R. 124.4(c)(2);
19. 40 C.F.R. 124.5(d)(3);
20. 40 C.F.R. 124.6(e);
21. 40 C.F.R. 124.10(b);
22. 40 C.F.R. 124.12(b);
23. 40 C.F.R. 124.16(b)(2);
24. 40 C.F.R. 124.18; and
25. 40 C.F.R. 124.19.

(59) "Remediation waste" is defined by 40 C.F.R. 260.10, and includes waste managed in implementing KRS 224.46-530 for releases beyond the facility boundary.

(60) "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 the experimental activity have not been promulgated under 401 KAR Chapter 39.

(61) "Resource Conservation and Recovery Act", "Act", "RCRA", "Subtitle C of RCRA", "RCRA Subtitle C", or "Subtitle C":

(a) Means KRS Chapter 224:

1. If referring to a permit issued by the cabinet pursuant to KRS Chapter 224-46, including a RCRA permit, Part B permit, RCRA Part B permit, RCRA permit by rule, and RCRA standardized permit, except for a federally issued EPA permit or a permit issued by another authorized state; and
2. If referring to the Federal hazardous waste program as a whole;

(b) Means "Act" or "RCRA" as defined by 40 C.F.R. 260.10 if referring to a specific section or provision of RCRA and as referenced in:

1. 40 C.F.R. 261, Appendix IX;
2. 40 C.F.R. 262, Subpart H;
3. 40 C.F.R. 262, Appendix;
4. 40 C.F.R. 270.1(a) and (b);

5. 40 C.F.R. 270.2 related to the definition of "RCRA";
 6. 40 C.F.R. 270.14(d)(3); and
 7. 40 C.F.R. 270.51(d) in the reference to "EPA-issued RCRA permit"; or
- (c) Means "Act" or "RCRA" as defined by 40 C.F.R. 260.10 and KRS Chapter 224, as appropriate, as referenced in 40 C.F.R. Part 124.
- (62) "Schedule of compliance" is defined by 40 C.F.R. 270.2, and includes a cabinet order leading to compliance with KRS Chapter 224 and 401 KAR Chapter 39.
- (63) "Solid waste" means for the purposes of 401 KAR Chapter 39, waste that meets the criteria established in 40 C.F.R. 261.2.
- (64) "Solid waste management unit" means 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. These units include any area at a facility at which solid wastes have been routinely and systematically released.
- (65) "Spill" means any accidental spilling, leaking, pumping, pouring, emitting, or dumping into or on any land or water of hazardous wastes or materials which, if spilled, become hazardous wastes.
- (66) "Start-up" means the setting in operation of a hazardous waste management unit, hazardous secondary material management unit, or control device for any purpose.
- (67) "State Director" means "cabinet", as defined by KRS 224.1-010(8).
- (68) "Storage" is defined by KRS 224.1-010(27).
- (69) "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.
- (70) "Transportation" is defined by KRS 224.1-010(28), except as used in the phrase "Department of Transportation".
- (71) "Treatment" is defined by KRS 224.1-010(29).
- (72) "United States Environmental Protection Agency", "U.S. Environmental Protection Agency", or "U.S. EPA" means "Environmental Protection Agency" as defined by this administrative regulation.
- (73) "Used oil" is defined by KRS 224.50-545(2)(a).
- (74) "Waste" is defined by KRS 224.1-010(30).
- (75) "Waste pile" means a noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not in a containment building.
- (41 KAR 039:005. 23 Ky.R. 1192; 2132; eff. 3-12-1997; 44 Ky.R. 285, 1232; eff. 12-7-2017; TAm eff. 7-9-2018; Crt eff. 9-5-2018; Crt eff. 8-29-2025.)