

#### **401 KAR 39:080. Hazardous waste handlers.**

RELATES TO: KRS 224.10, 224.46, 224.99, 40 C.F.R. Parts 260 through 267, 270, 273, 279

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510, 224.50-545

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.46-510 requires the Energy and Environment Cabinet to promulgate administrative regulations establishing standards applicable to transporters of hazardous waste regarding recordkeeping and compliance with the manifest system. KRS 224.46-510(1) requires the cabinet to promulgate administrative regulations to establish requirements relating to generators of hazardous waste and establish standards for generators of hazardous waste by amount of waste generated. KRS 224.46-510(3) requires that the cabinet establish classes or categories of hazardous waste reflecting the relative degree of hazard. KRS 224.50-545 requires that used automotive and industrial oil shall be recycled or disposed of properly. This administrative regulation establishes the standards for hazardous waste handlers.

##### **Section 1. Generators of Hazardous Waste.**

(1) Except as established in subsections (2) through (11) of this section and Section 5 of this administrative regulation, the requirements for standards applicable to generators of hazardous waste shall be as established in 40 C.F.R. Part 262, except 40 C.F.R. 262.10(k).

(2) Small quantity generators and large quantity generators shall register with the cabinet by completing and submitting:

(a) EPA form 8700-12 as referenced in 40 C.F.R. Parts 260 through 267, 270, 273, and 279; and

(b) Registration of Hazardous Waste Activity Addendum, DWM 7037A.

(3) The registration established in subsection (2) of this section shall be submitted annually to the cabinet at least forty-five (45) days prior to the expiration date shown on the certificate of registration.

(4)

(a) A generator that has not received an EPA identification number may obtain one by registering with the cabinet as established in subsection (2) of this section.

(b) Upon receiving the request and reviewing the information, the cabinet shall assign an EPA identification number to the generator.

(5)

(a) Hazardous waste generation and on-site management of hazardous waste shall be consistent with the registration submitted pursuant to subsection (2) of this section.

(b) If any information submitted in accordance with subsection (2) of this section changes, the generator shall modify and resubmit the form that includes the changes to the cabinet no later than thirty (30) days following the change.

(6) In addition to 40 C.F.R. 262.17, any large or small quantity hazardous waste generator that no longer generates hazardous waste on site, closes its facility, or goes out of business, shall complete and submit to the cabinet the Request to be Removed from the Hazardous Waste Handler List, DWM 7086, within ninety (90) days after the last date of hazardous waste generation.

(7)

(a) A hazardous waste generator may only treat on-site in tanks, containers, containment buildings, and on drip pads, if:

1. A generator complies with the hazardous waste accumulation provisions of this section;

2. The generator notifies the cabinet of the intent to treat hazardous waste as required by subsection (2) of this section; and

3. The cabinet issues written approval to the generator.

- (b)
  - 1. The cabinet shall not approve any treatment process that is not demonstrated to provide adequate protection to human health, safety, or the environment in a manner consistent with the purpose of 401 KAR Chapter 39 and KRS Chapter 224.
  - 2. If the cabinet determines that the approved treatment is not protective of human health, safety, or the environment, the cabinet shall issue a written revocation of the approval and all treatment activities shall cease.
- (8)
  - (a) Generators, except for very small quantity generators, shall prepare a Hazardous Waste Annual Report for the cabinet annually by completing and submitting:
    - 1. EPA form 8700-13 A/B as referenced in 40 C.F.R. 262.41(a), 264.75, 265.75, and 267.75; and
    - 2. Hazardous Waste Annual Report Addendum, DWM 7072A.
  - (b) Each generator, except for very small quantity generators, shall submit a copy of the Hazardous Waste Annual Report established in paragraph (a) of this subsection as established in KRS 224.46-510(1)(h).
- (9) A generator, except for very small quantity generators, shall not offer hazardous waste to a transporter or to a treatment, storage, or disposal facility that has not received an EPA identification number.
- (10)
  - (a) A large quantity generator or small quantity generator shall not treat, store, dispose of, transport, or offer for transportation, hazardous waste until the generator has:
    - 1. Registered with the cabinet as established in subsection (2) of this section; and
    - 2. Received an EPA identification number.
  - (b) A very small quantity generator shall not treat hazardous waste until the generator has registered with the cabinet as established in subsection (2) of this section.
- (11) The requirement for the container marking wording to state "Federal Law Prohibits" referenced in 40 C.F.R. 262.32(b), shall be replaced with "Federal and State Law Prohibit".
- (12) In addition to the requirements in 40 C.F.R. 262.18, a very small quantity generator voluntarily requesting to obtain an EPA identification number, shall register with the cabinet in accordance with subsection (2) of this section.

## Section 2. Transporters of Hazardous Waste.

- (1) Except as established in subsections (2) and (3) of this section and Section 5 of this administrative regulation, the requirements for standards applicable to transporters of hazardous waste shall be as established in 40 C.F.R. Part 263.
- (2)
  - (a) A transporter shall not transport hazardous wastes or used oil within the Commonwealth of Kentucky without having received an EPA identification number from the cabinet, any other RCRA authorized state, or from the Federal Environmental Protection Agency.
  - (b) To obtain an EPA identification number from the cabinet, a transporter shall:
    - 1. For a transporter who is also a hazardous waste generator or used oil transporter, register with the cabinet as established in Section 1(2) and (3) of this administrative regulation; or
    - 2. For a transporter that is not also a hazardous waste generator or used oil transporter, complete and submit the Registration of Hazardous Waste Transportation Activity, DWM 7053.
- (3) In addition to 40 C.F.R. 263.30(c), an air, rail, highway, or water transporter that has any knowledge of a release or threatened release of a hazardous substance or pollutant or

contaminant shall notify and report to the cabinet as established in Section 5(1) of this administrative regulation.

### Section 3. Universal Waste.

(1) Except as established in subsections (2) through (4) of this section and Section 5 of this administrative regulation, the requirements for standards for universal waste management shall be as established in 40 Part C.F.R. 273.

(2)

(a) Prior to conducting on-site treatment of their own accumulated universal waste, a large or small quantity handler shall be subject to the requirements of Section 1 of this administrative regulation, including the requirement for on-site treatment by generators.

(b) Prior to conducting on-site treatment of accumulated universal waste received from off-site, a large or small quantity handler shall be subject to the requirements of 401 KAR 39:060 and 401 KAR 39:090.

(3) Breaking, disassembling, crushing, or otherwise damaging, intentionally or unintentionally, universal waste lamps shall render them a hazardous waste.

(4) A large quantity handler of universal waste shall register and report as established in Section 1 of this administrative regulation.

### Section 4. Used Oil.

(1) Except as established in subsections (2) through (9) of this section and Section 5 of this administrative regulation, the requirements for standards for the management of used oil shall be as established in 40 C.F.R. Part 279, except 40 C.F.R. 279.82.

(2) In addition to 40 C.F.R. 279.22 and 40 C.F.R. 279.52, KRS 224.1-400(11) and (12) and KRS 224.1-405 shall apply.

(3) An owner or operator of each used oil collection center shall:

(a) Register initially with the cabinet as established in Section 1(2) of this administrative regulation; and

(b) Complete and submit a Hazardous Waste Annual Report annually as established in Section 1(8) of this administrative regulation.

(4) A used oil processor, recycler, re-refiner, burner, or marketer that has not received an EPA identification number shall register with the cabinet as established in Section 1(2) of this administrative regulation.

(5) In addition to 40 C.F.R. 279.54, upon detection of a release of used oil to the environment not subject to the requirements established in 401 KAR 42:060, an owner or operator shall notify and report to the cabinet pursuant to Section 5(1) of this administrative regulation.

(6) In addition to 40 C.F.R. 279.43, 601 KAR 1:025 and Section 5(1) of this administrative regulation shall apply.

(7) Used oil shall not be used as a dust suppressant within the Commonwealth of Kentucky.

(8) In addition to 40 C.F.R. Part 280, 401 KAR Chapter 42 shall apply.

(9) The citations to Sections 307(b) and 402 of the Clean Water Act referenced in 40 C.F.R. Part 279 shall also include 401 KAR Chapter 5.

### Section 5. Exceptions and Additions.

(1) In the event of a release or threatened release of a hazardous substance, pollutant or contaminant, or petroleum to the environment in a quantity that may present an imminent or substantial danger to human health or the environment as established in KRS 224.1-400, the facility authorized representative shall immediately notify the cabinet's twenty-four (24) hour emergency response line and provide a written report of the incident or accident within seven (7) days of the release, pursuant to KRS 224.1-400.

(2) In addition to RCRA, Section 3008 KRS 224.10-420 through 224.10-470, 224.46-530, and 224.99-010 shall apply.

(3) In addition to RCRA, Subtitle C KRS 224.46 shall apply.

(4)

(a) As referenced in 401 KAR Chapter 39, the requirements in RCRA Section 3010 shall be replaced with the requirement that any person generating or transporting a substance, or owning or operating a facility for treatment, storage, disposal, or recycling of the substance to register with the cabinet after promulgation of an administrative regulation identifying a substance by its characteristics or listing as hazardous waste subject to 401 KAR Chapter 39.

(b) The registration shall be filed as established in Section 1(2) of this administrative regulation and within ninety (90) days after promulgation or revision of the administrative regulation unless another registration date is established in the administrative regulations.

(5) In addition to 40 C.F.R. Part 257 and 40 C.F.R. Part 258, 401 KAR Chapters 45, 47, and 48 shall apply.

#### Section 6. Incorporated by Reference.

(1) The following material is incorporated by reference:

(a) "Hazardous Waste Annual Report Addendum", DWM 7072A, June 2017;

(b) "Registration of Hazardous Waste Activity Addendum", DWM 7037A, July 2018;

(c) "Registration of Hazardous Waste Transportation Activity", DWM 7053, June 2017; and

(d) "Request to be Removed from the Hazardous Waste Handler List", DWM 7086, June 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 300 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. until 4:30 p.m.

(3) This material may also be obtained on the division's Web site at [eec.ky.gov/environmental-protection/waste](http://eec.ky.gov/environmental-protection/waste).

(12 Ky.R. 1104; eff. 2-4-1986; 14 Ky.R. 1506; eff. 3-10-1988; 15 Ky.R. 374; eff. 10-26-1988; 16 Ky.R. 628; eff. 1-9-1990; 23 Ky.R. 980; eff. 3-12-1997; 44 Ky.R. 304, 962, 1249; eff. 12-7-2017; Crt eff. 9-5-2018; 45 Ky.R. 1355; eff. 4-5-2019; TAm eff. 5-7-2019.)