

401 KAR 45:030. Obtaining a special waste site or facility permit.

RELATES TO: KRS 146.200-146.990, 224.01, 224.10, 224.40, 224.50, 224.70, 224.99, 16 U.S.C. 661 et seq., 1273 et seq., 1531 et seq., 50 C.F.R. Part 402

STATUTORY AUTHORITY: KRS 224.01-110, 224.10-100, 224.10-210, 224.40-305, 224.40-330, 224.50-760, 16 U.S.C. 661 et seq., 1273 et seq., 1531 et seq., 50 C.F.R. Part 402

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 requires the cabinet to adopt administrative regulations for the management, processing, and disposal of special wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a permit. This chapter establishes the permitting standards for special waste sites or facilities, and the operating standards applicable to all special waste sites or facilities. This administrative regulation establishes the procedures for obtaining a permit for a special waste site or facility.

Section 1. The Objective and Requirements of the Application for a Special Waste Formal Permit. All applicants for a special waste formal permit shall submit an application, on the designated application form, that contains all of the information specified in this administrative regulation. The applicant shall submit the application on a form approved by the cabinet and signed in accordance with Section 10 of this administrative regulation. Engineering drawings, specifications and studies shall be certified by a professional engineer registered in Kentucky. The contents of the application shall be accurate and complete before the cabinet makes a preliminary determination to issue a special waste formal permit.

Section 2. Scope of the Permit Requirements.

(1) Except as otherwise provided in this section, any person managing special waste shall maintain a special waste site or facility permit as specified in Section 2 of 401 KAR 45:020.

(2) Specific exclusions.

(a) The disposal of mining overburden, coal mining wastes, refuse, and coal mining by-products returned to the mine site of generation, including any nonhazardous waste generated directly as a result of the mining operation, shall not require a special waste site or facility permit. Owners or operators disposing of the materials in this subsection shall obtain and be regulated by the appropriate permit issued pursuant to KRS Chapter 350.

(b) Persons managing special waste during emergency situations such as:

1. A spill of a special waste;
2. An imminent and substantial threat of a spill of special waste; or
3. A spill of a material which, when spilled, becomes a special waste.

(3) Specific inclusions.

(a) Owners and operators of sites or facilities with permits under other programs for certain aspects of the facility operation shall also obtain the required special waste site or facility permit.

(b) Any person who initiates or continues special waste containment or disposal activities after emergency situations are taken shall be subject to all applicable requirements of this chapter for those activities.

(4) Permits for less than an entire facility. The cabinet may issue or deny a permit for one (1) or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility. A permit-by-rule for any unit for which a permit has not been issued or denied shall not be affected by the issuance or denial of a permit to any other unit at the facility.

Section 3. Considerations of State and Federal Law. Permits shall be issued in a manner and shall contain conditions consistent with requirements of applicable state and federal laws. These laws include but are not limited to:

- (1) 16 USC 661 et seq. (the Fish and Wildlife Coordination Act of 1958, as amended);
- (2) 16 USC 1273 et seq. (the National Wild and Scenic Rivers System);
- (3) 16 USC 1531 et seq. (the Endangered Species Act of 1983, as amended) and 50 CFR Part 402;
- (4) KRS 146.200 to 146.360 and 401 KAR Chapters 4 and 5 (the Wild Rivers System); and
- (5) KRS 146.410 to 146.990 and KAR Title 400 (the Nature Preserves System).

Section 4. Limitations of a Permit.

- (1) A permit may be modified or revoked during its term for cause as set forth in 401 KAR 45:040 and in 401 KAR Chapter 40.
- (2) The issuance of a permit shall not convey any property rights or any exclusive privilege.
- (3) The issuance of a permit shall not authorize any injury to persons or property or invasion of other private property rights, or any infringement of state or local laws or administrative regulations.

Section 5. Prohibition of Use of Unpermitted Facilities. No person shall deliver, or cause to be delivered, special waste to a site or facility unless the owner or operator has:

- (1) Submitted a notice to the cabinet in accordance with Section 4(1) of 401 KAR 45:020 as an existing waste site or facility in operation on or before June 24, 1992;
- (2) Qualified for a permit-by-rule in accordance with 401 KAR 45:060;
- (3) Qualified for a registered permit-by-rule in accordance with 401 KAR 45:070 or 401 KAR 45:100;
- (4) Obtained a solid waste facility permit providing for the disposal of special waste in accordance with 401 KAR Chapters 47 and 48; or
- (5) Obtained a special waste formal permit in accordance with this chapter.

Section 6. Permit Required.

- (1) No person shall engage in the management, processing, or disposal of special waste at a waste site or facility without first obtaining a permit from the cabinet as specified in this chapter.
- (2) No person shall engage in the management, processing, or disposal of special waste and solid waste without first obtaining a permit from the cabinet as specified in 401 KAR Chapters 47 and 48.
- (3) No person shall engage in the management, processing, or disposal of special waste and hazardous waste without first obtaining a permit from the cabinet as specified in 401 KAR Chapters 31 to 39.
- (4) An owner or operator shall maintain a valid permit during the active life of the special waste site or facility, including the closure and postclosure periods required under 401 KAR 45:100 and 401 KAR 45:110.

Section 7. New Special Waste Sites or Facilities.

- (1) No person shall begin physical construction of a new special waste site or facility without having received a special or solid waste permit.
- (2) An applicant for a special waste formal permit shall submit to the cabinet an application that contains the information specified in Section 8 of this administrative regulation.
- (3) The site shall be designed in accordance with the applicable requirements of this chapter.

- (4) If the cabinet determines during the review of the application that the proposed site cannot meet the requirements of this chapter, the cabinet shall deny the permit.
- (5) The cabinet shall make a preliminary determination to issue or deny an application for a special waste formal permit within 180 calendar days from initial receipt of the application.
- (6) If the application is incomplete, the cabinet shall notify the applicant in writing of the deficiencies. Failure to submit any required information noted by the cabinet within ninety (90) calendar days of receipt of the deficiencies may be grounds for denial of the application. Periods of deficiency correction shall not be counted against the review time frame specified in subsection (5) of this section.

Section 8. Application for a Special Waste Formal Permit.

- (1) Any person who is required to have a special waste site or facility permit under this chapter shall sign and submit a complete application to the cabinet. The application forms are:
 - (a) Persons applying for a special waste landfill permit shall use form DEP 7094A entitled "Application For A Special Waste Landfill Permit" (November 2016). The requirements contained in the special waste landfill permit application are incorporated in this administrative regulation by reference. The cabinet may require that additional information be included in the application to ensure that a draft permit conforms with the requirements of this chapter. The permit application form may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at eec.ky.gov/environmental-protection/waste;
 - (b) Persons applying for a special waste landfarming facility permit shall use form DEP 7021A entitled "Notice of Intent to Apply for a Special Waste Landfarming or Composting Permit" (November 2016), and form DEP 7021B entitled "Application for a Special Waste Landfarming Facility Permit" (November 2016). The requirements contained in forms DEP 7021A and DEP 7021B are incorporated in this administrative regulation by reference. Additional information may be required by the cabinet to ensure that a draft permit conforms to the requirements of this chapter. The permit application forms may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at eec.ky.gov/environmental-protection/waste; and
 - (c) Persons applying for a special waste composting facility permit shall use form DEP 7021A entitled "Notice of Intent to Apply for a Special Waste Landfarming or Composting Permit" (November 2016), and form DEP 7094D entitled "Application for a Special Waste Composting Facility Permit" (November 2016). The requirements contained in forms DEP 7021A and DEP 7094D are incorporated in this administrative regulation by reference. Additional information may be required by the cabinet to ensure that a draft permit conforms to the requirements of this chapter. The permit application forms may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at eec.ky.gov/environmental-protection/waste.
- (2) Alternative application information may be used only after approval by the cabinet upon a demonstration by a qualified registered professional engineer in accordance with 401 KAR 30:020 that the alternative information results in information equal to or better than that in this administrative regulation to determine that the site and design comply with 401 KAR 30:031 and this chapter.

(3) Persons applying for a special waste formal permit shall submit to the cabinet, as part of the application, form DEP 7094J entitled "Past Performance Information" (November 2016). The requirements contained in form DEP 7094J are incorporated in this administrative regulation by reference. The past performance information is collected in accordance with the requirements of KRS 224.40-330(1) and (3). The information form may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at eec.ky.gov/environmental-protection/waste.

(4) The cabinet shall not begin the processing of a formal permit application until the applicant has fully complied with the application requirements for a permit pursuant to this administrative regulation, 401 KAR 45:100 or 401 KAR 45:110, and 401 KAR 45:160.

(5) Upon completing the review, the cabinet shall notify the applicant in writing whether the application is complete or incomplete. If the application is incomplete, the cabinet shall list the information necessary to make the application complete. If the application is for an existing waste site or facility, the cabinet shall specify in the notice of deficiency a date for submitting the necessary information. The cabinet shall notify the applicant in writing when the application is deemed complete after receiving any required additional information. The notification of completeness shall also contain any public notice required under Section 4 of 401 KAR 45:050.

(6) If an applicant fails or refuses to correct deficiencies in the application or submit additional information, the permit shall be denied and, if applicable, enforcement actions taken under the appropriate statutory regulatory provisions.

(7) If the cabinet determines that a site investigation or visit is necessary for any reason in conjunction with the processing of an application, the applicant or an authorized representative of the applicant shall accompany the cabinet representative on a site investigation or visit if requested by the cabinet.

(8) The cabinet may require such additional information as it deems necessary in order to make a final determination to issue a permit or deny the permit application.

Section 9. Formal Permit Issuance.

(1) The cabinet shall make a preliminary determination to issue or deny the permit application after review of the complete application. In making this preliminary determination, the cabinet shall consider the requirements specified in this chapter and KRS Chapter 224.

(2) If the cabinet makes a preliminary decision to deny the permit application, it shall issue a notice of intent to deny. A notice of intent to deny the permit application shall be subject to the public information process as specified in 401 KAR 45:050. If the cabinet's final decision reverses the preliminary decision to deny the permit application, the cabinet shall withdraw the notice of intent to deny and proceed to prepare a draft permit under subsection (3) of this section.

(3) If the cabinet makes a preliminary determination to issue the permit, a draft construction permit shall be prepared containing the following information:

(a) The proposed design and specifications; and

(b) Any conditions in accordance with Section 2 of 401 KAR 45:140.

(4) The draft construction permit shall be based on the administrative record outlined in Section 3 of 401 KAR 45:050.

(5) All draft construction permits prepared by the cabinet under this section, including those applications for horizontal expansions under Section 1 of 401 KAR 45:040, shall be subject to the public information process as specified in 401 KAR 45:050.

- (6) After the close of the public comment period, the cabinet shall issue a final permit decision to issue or deny the construction permit.
- (7) A final permit decision shall become effective on the date of issuance of the construction permit by the cabinet.
- (8) The cabinet shall document the disposition of significant comments received, and, within thirty (30) days of a final permit decision, make this documentation available to the public by supplying it to the repository established in the county in which the facility is proposed.
- (9) The cabinet shall issue a construction permit if it finds that the applicant for the permit has met all the requirements for application and the requirements of this chapter and KRS Chapter 224.
- (10) The applicant shall maintain a construction permit in full force and effect until the construction/operation permit is issued by the cabinet.
- (11) A construction/operation permit shall be issued by the cabinet when:
 - (a) The applicant has notified the cabinet, in writing, that the liner system, if required, has been constructed; and
 - (b) A representative of the cabinet has inspected the site and verified in writing, within thirty (30) days of the inspection, that the site has been developed in accordance with plans approved by the cabinet;
 - (c) The required financial responsibility in 401 KAR 45:080 for closure has been established using any of the mechanisms required by 401 KAR 45:080 in an amount determined by an approved closure plan and cost estimate; and
 - (d) The applicant has submitted a certification by an engineer registered in Kentucky that the liner system, if required, and other features have been constructed in accordance with the approved plans and specifications.
- (12) The cabinet may issue a permit subject to specific conditions which include, but are not limited to, types of wastes which may be accepted or disposed, special operating conditions, schedules for compliance for corrective action, and the issuance of other applicable permits of the cabinet.

Section 10. Signatures to Permit Applications and Reports.

- (1) Applications. All permit applications and modifications shall be signed as follows:
 - (a) For a corporation, by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:
 - 1. A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation;
 - 2. The manager of one (1) or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million; or
 - 3. A person who, pursuant to a corporation resolution, is designated to act on behalf and bind the corporation on all matters relating to permit applications and modifications. A copy of the corporation resolution shall be submitted to the cabinet attached to the permit application or modification.
 - (b) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively;
 - (c) For a limited partnership, by a general partner; or
 - (d) For a municipality or state, federal, or other public agency, by a principal executive officer. For purposes of this paragraph, a principal executive officer includes:
 - 1. The ranking elected official;
 - 2. The chief executive officer of the agency;

3. A senior executive officer having responsibility for the overall operation of a principal geographic unit of the agency; or
 4. A person authorized, in writing, to sign on behalf of a person described in subparagraphs 1, 2, and 3 of this paragraph. The written authorization shall specify either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or a position of equivalent responsibility. A duly authorized representative must thus be either a named individual or any individual occupying a named position.
- (2) Reports. All reports required by permits, and other information requested by the cabinet, shall be signed by a person described in subsection (1) of this section, or by a duly authorized representative of that person. A person shall be a duly authorized representative only if:
- (a) The authorization is made in writing by a person described in subsection (1) of this section;
 - (b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility. A duly authorized representative must thus be either a named individual or any individual occupying a named position; and
 - (c) The written authorization is submitted to the cabinet.
- (3) Changes to authorization. If an authorization under subsection (2) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (2) of this section shall be submitted to the cabinet prior to or together with any reports, information, or applications to be signed by an authorized representative.
- (4) Certification. Any person signing a document under subsection (1) or (2) of this section shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for such violations."

Section 11. Past Performance Considered in Review. Past performance of the owner, operator, and key personnel, as defined in KRS 224.01-010(44), of the special waste site or facility shall be considered in the review for issuance or denial of the permit application and in the determination of any requirement for specialized conditions in accordance with KRS 224.40-330(1) and (3).

Section 12. Term and Expiration of Permits.

- (1) Permits-by-rule and registered permits-by-rule shall be perpetual unless modified or revoked by the cabinet. Permits-by-rule and registered permits-by-rule may be automatically revoked by the cabinet if the site or facility fails to meet the requirements of 401 KAR 30:031 or this chapter.
- (2) Special waste site or facility construction permits shall be effective for a fixed term not to exceed five (5) years.
- (3) Special waste landfill construction/operating permits shall be issued for the anticipated life of the facility. A shorter period may be specified by the cabinet.
- (4) Special waste landfarming facility construction/operation permits shall be effective for a fixed term not to exceed ten (10) years. The cabinet shall review the conditions of

the permit after five (5) years and modify the permit as necessary.

(5) For permits issued under this administrative regulation for a term greater than five (5) years, the cabinet may reevaluate the terms and conditions of the permit any time prior to the expiration date of the permit. Issued permits may be reevaluated in accordance with the requirements of this chapter and KRS Chapter 224, including reevaluation of the bond. After reevaluation of the permit, the cabinet may require modifications of the permit pursuant to Section 1 of 401 KAR 45:040.

(6) Modification of term of permit. Except as provided in Section 14 of this administrative regulation, the term of a permit shall not be extended by modification beyond the maximum duration specified in subsections (2) to (4) of this section.

(7) Reduced term of permit. The cabinet may issue any permit for a duration that is less than the full allowable term under subsections (2) to (4) of this section.

Section 13. Renewal of Formal Permits.

(1) Any application to renew a construction or construction/operation permit shall be submitted to the cabinet at least 180 days before the expiration date of the permit. Persons applying for the renewal of a permit shall use form DEP 7095 entitled "Application for Renewal of a Formal Permit" (November 2016). The requirements contained in the renewal application are incorporated in this administrative regulation by reference. The cabinet may require that additional information be included in the application to ensure that a renewed permit conforms to the requirements of this chapter and KRS Chapter 224. The renewal application forms may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at eec.ky.gov/environmental-protection/waste.

(2) Applications to renew a construction or construction/operation permit shall be subject to a review in accordance with the requirements of this chapter.

(3) The cabinet, in issuing a renewal, shall consider whether all conditions of prior permit conditions and agreed orders have been met. The cabinet may request updated information and impose additional or modified permit conditions when deemed appropriate.

Section 14. Continuation of Expiring Permits.

(1) The conditions of an expired permit shall continue in force to ensure the safe disposal of waste until the effective date of a new permit if:

(a) The permittee has submitted a timely application for renewal of a permit under Section 13 of this administrative regulation. These applications shall be complete and the applicant shall have paid the appropriate fees due under 401 KAR 45:250;

(b) The cabinet, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit; and

(c) The cabinet has not given written notice of permit expiration due to enforcement actions or other reasons.

(2) Effect. Permits continued under this section shall remain in full force and effect.

Section 15. Termination of Permits. Special waste site or facility permits shall automatically terminate on the expiration date unless the cabinet has reissued the permit or issued a continuation in accordance with Section 14 of this administrative regulation.

Section 16. Confidentiality of Information.

(1) Claims of confidentiality. Any information submitted to the cabinet pursuant to this chapter may be claimed as confidential by the applicant. Any such claim shall be asserted at the time of submission in accordance with KRS 224.10-210 and 400 KAR 1:060. If no claim is made in accordance with 400 KAR 1:060, the cabinet may make the information available to the public without further notice.

(2) Denial of claims of confidentiality. Claims that the name and address of any permit applicant or permittee is confidential shall be denied.
(18 Ky.R. 3080; 3433; eff. 6-24-1992; TAm eff. 7-8-2016; TAm eff. 12-21-2016; Crt eff. 9-5-2018; TAm eff. 10-15-2018; TAm eff. 5-7-2019.)