

**401 KAR 45:135. Requirements for emergency and research, development, and demonstration permits.**

RELATES TO: KRS 224.01, 224.10, 224.40, 224.46, 224.50, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 requires the cabinet to adopt administrative regulations for the management, processing, and disposal of 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 standards applicable to all special waste sites or facilities. This administrative regulation sets forth the requirements for an emergency permit and a research, development, and demonstration permit.

**Section 1. Emergency Permit.**

(1) The cabinet may issue an emergency permit that allows for the disposal or temporary storage of special waste in response to a situation that poses an imminent and substantial threat to human health or the environment. However, an emergency permit shall only be issued when the circumstances preclude the processing of a permit of appropriate classification, and the permitted site would not create an endangerment to human health or the environment.

(2) An emergency permit:

- (a) Shall be oral or written. If oral, it shall be followed in five (5) days by a written emergency permit request;
- (b) Shall not exceed ninety (90) days in duration;
- (c) Shall clearly specify the special wastes to be received, and the manner and location of treatment, storage, or disposal;
- (d) May be unilaterally terminated by the cabinet at any time if the cabinet determines that termination is appropriate to protect human health or the environment;
- (e) Shall incorporate to the extent possible, and not inconsistent with the emergency situation, all applicable requirements of this chapter and 401 KAR 30:031;
- (f) Shall specify that all remaining special waste is to be removed at the end of the term of the emergency permit to a properly permitted special waste site or facility in order to be exempted from closure and financial requirements of this chapter; and
- (g) Shall specify that failure to comply with the conditions of the emergency permit shall be grounds for the cabinet to take any appropriate enforcement action including an action to recover the cost of proper closure.

**Section 2. Research, Development, and Demonstration Permits.**

(1) The cabinet may issue a research, development, and demonstration permit for any special waste treatment or disposal site or facility that proposes to utilize an innovative and experimental special waste technology or process for which permit standards for such experimental activity have not been promulgated under this chapter. The permit shall include terms and conditions that will assure protection of human health and the environment. In issuing research, development, and demonstration permits, the cabinet shall:

- (a) Provide standards for the construction of the facility, and authorize operation of the facility for not longer than two (2) years, unless the permit is renewed as provided in subsection (4) of this section;
- (b) Provide authorization for the receipt, storage, and disposal by the facility of only those types and quantities of special waste that the cabinet deems necessary for purposes of determining the efficiency and performance capabilities of the technology or process and the effects of the technology or process on human health and the environment; and

(c) Include requirements necessary to protect human health and the environment including, but not limited to: monitoring, operation, financial responsibility, closure, corrective action, testing, and reporting.

(2) The processing of a research, development, and demonstration permit shall be accomplished on a case-by-case basis. The cabinet may, consistent with the protection of human health and the environment, modify or waive permit issuance requirements in this chapter except there shall be no modification or waiver of the requirement to post financial assurance in accordance with 401 KAR 45:080 or the provisions of 401 KAR 45:050 regarding public notification.

(3) The cabinet may order an immediate termination of all operations at the site or facility at any time it is determined that termination is necessary to protect human health or the environment.

(4) Permits issued under this section may be renewed one (1) time for a period not to exceed two (2) years.

(5) Persons applying for a new or renewal of a research, development, and demonstration permit shall use form DEP 7094B entitled "Application For A Research, Development, and Demonstration Permit" (November 2016). The requirements contained in the research, development, and demonstration permit application are incorporated in this administrative regulation by reference. The cabinet may require that additional information be included in the application to ensure the protection of human health and the environment. The application 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](http://eec.ky.gov/environmental-protection/waste).

(6) The cabinet, in issuing a research, development and demonstration permit, shall prepare as a permit condition a list of statutes and administrative regulations with which the owner or operator of the facility is required to comply. The cabinet shall determine the groundwater monitoring, closure, postclosure, financial assurance obligations, and reporting requirements of the owner or operator and shall list them as a permit condition.

(7) The owner or operator of a research, development, and demonstration site or facility shall submit a renewal application at least 180 days prior to the expiration of the initial permit.

(18 Ky.R. 3107; 3446; eff. 6-24-1992; TAm eff 7-8-2016; TAm eff. 12-21-2016; Crt eff. 9-5-2018; TAm eff. 5-7-2019.)