

401 KAR 45:210. Designation of waste as special waste.

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

CERTIFICATION STATEMENT:

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 standards applicable to all special waste sites or facilities. This administrative regulation sets forth the process for identifying special waste and for listing waste as special waste.

Section 1. Coverage. This administrative regulation shall be used by the cabinet to determine those wastes that meet the criteria of special waste and to determine if a waste may be designated as special waste. Wastes not specifically listed as special waste in KRS 224.50-760 are regulated as either solid waste, as defined by KRS 224.01-010(31)(a), or hazardous waste, as defined by KRS 224.01-010(31)(b) and the criteria of 401 KAR Chapter 31, unless the cabinet has made a designation in accordance with the provisions of this administrative regulation.

Section 2. Criteria for Designating Special Waste. The cabinet may list classes or types of waste as special waste if wastes within the class or type of waste meet the characteristics of special waste found in Section 3 of this administrative regulation. The cabinet shall designate a waste as a special waste upon:

- (1) Determining that the waste meets the criteria in Section 3 of this administrative regulation; and
- (2) Following the procedures in Section 4 of this administrative regulation.

Section 3. Criteria for Identifying Special Waste. The cabinet shall identify and define a special waste only upon determining that:

- (1) The waste exhibits the characteristic of high volume as determined by:
 - (a) Nonliquid wastes that are generated at an average annual rate of greater than 49,614 tons or 45,000 metric tons per year per Kentucky facility; or
 - (b) Liquid wastes that are generated at an average annual rate of more than 1,000,000 metric tons per year per Kentucky facility; and
- (2) The waste exhibits the characteristic of low hazard if:
 - (a) There is low probability that the management, processing, or disposal of the waste would violate the provisions of 401 KAR 30:031;
 - (b) The waste is not a hazardous waste as defined in 401 KAR Chapter 31;
 - (c) The waste is not mixed with, codisposed or cotreated with solid waste or hazardous waste;
 - (d) The level of waste constituents does not exceed the maximum level of arsenic, barium, cadmium, chromium, lead, mercury, nitrate, selenium, and silver specified in Section 5 of 401 KAR 30:031; and
 - (e) For aqueous waste, the waste has a pH less than or equal to ten (10) and greater than or equal to four and five-tenths (4.5).

Section 4. Procedures for Designating Special Waste.

- (1) For each waste that a designation of special waste is proposed, the cabinet or applicant shall prepare a fact sheet containing the following information:
 - (a) The name and address of the applicant;
 - (b) The name and description of the waste proposed for designation as a special waste, the location of the disposal site, and the method of disposal;

(c) A brief abstract of the supporting documentation that demonstrates that the designation is appropriate, based on the criteria in Section 3 of this administrative regulation; and

(d) A description of any physical or chemical treatment of the waste prior to disposal.

(2) Based upon information submitted by the applicant, and any other information available to the cabinet, the cabinet shall make a determination on the designation as a special waste.

(3) The cabinet shall publish a public notice concerning the proposed designation of a waste as a special waste. The notice shall allow for a thirty (30) day public comment period.

(4) Upon finding that the request for designation meets the criteria in Section 3 of this administrative regulation, the cabinet shall notify the applicant in writing that the special waste is designated as a special waste.

(401 KAR 045:210. 18 Ky.R. 3115; eff.6-24-1992; Crt eff. 9-5-2018; Crt to Am; filing deadline 2-28-2027.)