

**401 KAR 47:207. Public information procedures for petroleum-contaminated soil treatment facilities.**

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.50, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the cabinet to promulgate rules and administrative regulations for the management, processing, or disposal of wastes. KRS 224.40-305 requires that persons engaging in the management, processing, and disposal of waste obtain a permit. This administrative regulation establishes permit issuance and public information procedures for petroleum-contaminated soil treatment facilities.

**Section 1. Definitions.**

(1) "Petroleum-contaminated soil" means silt, sand, clay, gravel, or other earthen material; or asphalt, concrete, or absorbent materials containing hydrocarbon concentrations above the levels established in 401 KAR 48:205, Section 6, Table 3, but does not exhibit a hazardous characteristic or is not a listed hazardous waste as defined in 401 KAR Chapter 31.

(2) "Petroleum-contaminated soil treatment facility" means a solid waste site or facility where petroleum-contaminated soil is treated to reduce contaminant concentrations to or below the levels established in 401 KAR 48:205, Section 6, Table 3.

**Section 2. Applicability.** The requirements in this administrative regulation apply to the following applications:

(1) A new petroleum-contaminated soil treatment facility permit as established in 401 KAR 47:205; or

(2) A major modification to an existing petroleum-contaminated soil treatment facility permit that is an increase in the amount of storage or treatment capacity, area, or volume.

**Section 3. Permit Application and Public Notice Process.**

(1) Upon receipt of DEP 7128, Notice of Intent to Apply for a Petroleum-contaminated Soil Treatment Facility, as incorporated by reference in 401 KAR 47:205, Section 10, or upon receipt of a request for a major modification to a petroleum-contaminated soil treatment facility permit in DEP 7129, Application for a Petroleum-contaminated Soil Treatment Facility Permit, as incorporated by reference in 401 KAR 47:205, Section 10, the cabinet shall provide a public notice that includes the items established in Section 4(1)(a) through (d) of this administrative regulation.

(2) Once the review in 401 KAR 47:205, Section 3(4)(g) is complete, the cabinet shall tentatively decide whether to issue the draft construction permit or to deny the application.

(a) If the cabinet makes a tentative determination to issue a construction permit, a draft permit shall be prepared that shall include the application by reference and contain the following information:

1. The proposed design and specifications; and
2. Proposed conditions to protect the human health and environment as established in 401 KAR 47:030.

(b) The draft permit shall be based on the administrative record as established in Section 7 of this administrative regulation.

(3) Upon completion of the draft permit, the cabinet shall comply with the public information procedures as established in Sections 4, 5, 6, and 8 of this administrative regulation.

(4) The cost of public information procedures established in subsection (3) of this section that are incurred by the cabinet shall be paid by the applicant.

(5) If the cabinet makes a determination to issue the final construction permit, a permit shall be issued that shall include the application by reference and contain the following information:

- (a) The design and specifications; and
- (b) Conditions to protect the human health and the environment as established in 401 KAR 47:030.

#### Section 4. Public Notice.

(1) A public notice shall contain the following information:

- (a) Name, address, and telephone number of the division processing the permit action for which notice is being given;
- (b) Name, address, and telephone number of the applicant and, if different, of the facility or activity regulated by the permit;
- (c) A brief description of the petroleum-contaminated soil treatment facility activities described in the permit application;
- (d) A brief description of the proposed location of the petroleum-contaminated soil treatment facility including a description of the primary access routes;
- (e) The location of a repository for documents in the county in which the petroleum-contaminated soil treatment facility is proposed or exists, including copies of the draft permit or permit, fact sheet and application;
- (f) The time and place of a hearing if already scheduled and procedures by which the public may participate in the final permit decision;
- (g) The statement: "The cabinet has issued a draft construction permit for a petroleum-contaminated soil treatment facility. A person may comment on the draft permit within thirty (30) days of the publication of this notice as established in 401 KAR 47:207, Section 3 or request a hearing pursuant to 401 KAR 47:207, Section 8. If the cabinet issues a final construction permit, any person who may be aggrieved by the permit issuance shall have thirty (30) days to file a petition as established in KRS 224.10-420(2)."; and
- (h) Additional information as established in KRS 224.40-305.

(2) Public notices may describe more than one (1) permit or permit action.

(3) Public notices shall be of a size to include not less than two (2) column widths for advertising and shall be in a display format.

(4) Public notices issued by the cabinet shall be distributed by the following methods:

- (a) By mailing a copy of a notice to the following persons:
  - 1. The applicant;
  - 2. Other agencies that the cabinet knows have issued or are required to issue an environmental permit for the same facility or activity;
  - 3.
    - a. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources;
    - b. The Kentucky Heritage Council; and
    - c. Other government authorities with jurisdiction over the petroleum-contaminated soil treatment facility, including other affected states;
  - 4.
    - a. Persons on a cabinet mailing list that has been compiled by notifying the public of the opportunity to be put on the mailing list through periodic publication; and
    - b. Individuals shall request in writing to be on the list;
  - 5.
    - a. Adjacent property owners to the proposed or existing facility.
    - b. If, prior to issuance of the final construction permit, an adjacent property owner provides written evidence to the cabinet that the adjacent property owner did not

receive public notice as required in clause a. of this subparagraph due to incorrect or incomplete information in the petroleum-contaminated soil treatment facility permit application, the cabinet shall send a certified letter to the adjacent property owner and allow that property owner an additional thirty (30) days to provide public comment from the date of receipt of the certified letter; and

(b) Publication of a notice in a daily or weekly major local newspaper of general circulation where the proposed or permitted site is located.

Section 5. Public Comment Period. The public comment period shall allow at least thirty (30) days for public comment during which an interested person may do the following:

(1) For the public notices established in Section 3(1) of this administrative regulation, an interested person may request a public hearing as established in Section 8 of this administrative regulation;

(2) For the public notices established in Section 3(3) of this administrative regulation:

(a) Submit written comments on the application or draft permit; or

(b) Request a public hearing as established in Section 8 of this administrative regulation; or

(3) For issuance of the permit in Section 3(5) of this administrative regulation, file a petition for an adjudicative hearing within thirty (30) days of the date of issuance as established in KRS 224.10-420(2).

Section 6. Fact Sheet.

(1)

(a) A fact sheet shall be prepared by the cabinet for a draft permit for a new or major modification to a petroleum-contaminated soil treatment facility as established in Section 2 of this administrative regulation.

(b) The cabinet shall send this fact sheet to the applicant and to a person if requested.

(2) The fact sheet shall include:

(a) A brief description of the petroleum-contaminated soil treatment facility permit application that is the subject of the permit action;

(b)

1. The type and quantity of petroleum-contaminated soil that is proposed to be and is being stored or treated; and

2. A summary of the facility design including the petroleum-contaminated soil treatment area, equipment, structures, liner, and leachate collection system specification;

(c) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record as established in Section 7 of this administrative regulation;

(d) Reasons why a requested variance as established in 401 KAR 30:020, Section 2 or other alternative to required standards is justified in the draft permit;

(e) The procedures for issuing a final decision on the draft permit including:

1. The beginning and ending dates of the comment period established in Section 8 of this administrative regulation, and the address where comments shall be received;

2. Procedures for requesting a hearing, and the nature of that hearing; and

3. Procedures including public participation in the final decision; and

(f) The name and telephone number of a person to contact for additional information.

Section 7. Administrative Record for Permits.

(1) The provisions of a draft permit prepared by the cabinet as established in Section 3(1) of this administrative regulation shall be based on the administrative record.

(2) The administrative record shall consist of:

(a) The application and supporting data furnished by the applicant;

- (b) The draft permit;
  - (c) The fact sheet as established in Section 6 of this administrative regulation;
  - (d) Documents cited in the fact sheet; and
  - (e) Documents contained in the supporting file for the draft permit.
- (3)
- (a) Material readily available at the cabinet need not be physically included at the public repository if the fact sheet contains a specific reference to the material.
  - (b) Published material need not be physically included at the public repository if it is specifically referred to in the administrative record.

#### Section 8. Public Hearings.

- (1) The cabinet shall hold a public hearing if public interest exists concerning a notice of intent to apply for petroleum-contaminated soil treatment facility permit or an application for petroleum-contaminated soil treatment facility permit.
- (2) If a public hearing is held, the secretary of the cabinet shall designate a presiding officer for the hearing who shall be responsible for its scheduling and orderly conduct.
- (3) The presiding officer shall allow:
  - (a) Persons to submit oral or written statements;
  - (b) A five (5) minute limit on the time allowed for oral statement by each individual; and
  - (c)
    - 1. The public comment period established in Section 5 of this administrative regulation to automatically be extended to the close of the public meeting.
    - 2. The cabinet shall not extend the thirty (30) day period to file a petition for an adjudicative hearing regarding permit issuance as established in KRS 224.10-420(2).
- (4) A written transcript of the hearing shall be made available to a person upon payment of the cost of copying.

Section 9. Adjudicative Hearing. The cabinet shall hold an adjudicative hearing as established in KRS 224.10-420(2) if a petition in opposition to a permit and a request for an adjudicative hearing is received within thirty (30) days of the issuance of a final construction permit as established in Section 3(5) of this administrative regulation.

#### Section 10. Response to Comments.

- (1) Upon cabinet issuance of a final construction permit, the cabinet shall issue a response to comments, which:
  - (a) Specifies which provisions of the draft permit have been changed in the final permit decision and the reasons for the change; and
  - (b) Describes and responds to comments on the proposed permit raised during the public comment period or during a public hearing.
- (2) The cabinet shall send the responses to comments to commenters.
- (3) The cabinet shall document that copies have been sent to each commenter and make copies available to the public upon written request.

#### Section 11. Issuance and Effective Date of Permit.

- (1)
  - (a) After the close of a public comment period as established in Section 5(2) of this administrative regulation and a hearing on a draft permit held in accordance with Section 8 of this administrative regulation, the cabinet shall issue a final construction permit decision as established in Section 3(5) of this administrative regulation.
  - (b) For the purposes of this section, a final construction permit decision means a final decision to issue, deny, modify, or terminate a permit.
- (2) A final construction permit decision shall become effective on the date issued by the cabinet.

(3) The cabinet shall provide notice of the final construction permit to persons on the mailing list as established in Section 4(4)(a) of this administrative regulation.  
(37 Ky.R. 2781; 554; eff. 10-6-2011; Crt eff. 10-9-2018.)