

401 KAR 49:011. General provisions relating to area solid waste management plans.

RELATES TO: KRS 109.041, 224.10-105, KRS 224.10-420, 224.10-440, 224.43-310(5), 224.43-315, 224.43-340, 224.43-345, 224.43-505

STATUTORY AUTHORITY: KRS 224.43-340, 224.43-345

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.43-340(1) authorizes the cabinet to promulgate administrative regulations pursuant to KRS Chapter 224 for the reduction and management of solid waste. This administrative regulation establishes general requirements and procedures for submittal, processing, and amending of area solid waste management plans.

Section 1. Preparation of an Area Solid Waste Management Plan.

- (1) An area solid waste management plan, referred to in this administrative regulation as "the plan," shall contain the information as established in KRS 224.43-345.
- (2) The plan shall be prepared and formatted in accordance with the Guidance for Preparing an Area Solid Waste Management Plan 5-Year Update, DEP 6062.

Section 2. Public Information Procedures.

- (1) The governing body of a solid waste management area shall be responsible for conducting a public information period on the contents of the plan, or an amendment to the plan pursuant to Section 4 of this administrative regulation, prior to submittal to the cabinet.
- (2) The public information period shall include a thirty (30) day comment period that shall commence with the publishing of a public notice by the governing body. The public notice shall:
 - (a) Be of a size to include not less than two (2) column widths and shall be in a display format;
 - (b) Be published in a daily or weekly newspaper of general circulation in each county in the area designated by the plan; and
 - (c) Include a description of:
 1. The proposed action;
 2. Location where the plan may be reviewed;
 3. Procedures for submitting comments; and
 4. Location of the public hearing, if a hearing is requested.
- (3) If a public hearing is requested, the governing body shall hold a public hearing during the public comment period.
 - (a) The hearing shall be held within fifteen (15) days of the close of the public comment period.
 - (b) The public notice for a hearing shall be published at least seven (7) days prior to the hearing in accordance with subsection (2)(b) of this section.
 - (c) The hearing may occur in conjunction with the governing body's normally scheduled official meeting.
- (4) The governing body shall respond in writing to written public comments within fifteen (15) days after the close of the public comment period.
 - (a) The governing body shall publish a notice in a daily or weekly newspaper of general circulation in each county in the area designated by the plan that the written response to public comments is available to the public.
 - (b) The notice shall state where copies of the response are maintained and how it may be obtained.
 - (c) The governing body shall mail the response to all comments to each individual who commented on the plan during the public comment period.

Section 3. Submittal and Plan Review Process.

- (1) All plans shall be submitted no later than the deadlines established in KRS 224.43-340 and 224.43-345 and shall be accompanied by an ordinance, resolution, or administrative regulation approving the plan from the appropriate governing body of the solid waste management area.
- (2) The plan shall be sent to the cabinet.
- (3) The cabinet shall review each submitted plan for consistency with KRS 224.43-340, KRS 224.43-345, and this administrative regulation.
- (4) The cabinet shall notify the governing body in writing if the plan is approved.
- (5) If the cabinet disapproves a plan, the cabinet shall notify the governing body in writing of each deficiency with the plan.
 - (a) The governing body shall have up to ninety (90) days from the date of the first notice of deficiency to correct all deficiencies and submit an approvable plan to the cabinet. The time elapsed during the governing body's correction of deficiencies shall not count toward the cabinet's 120-day review deadline established in KRS 224.43-345(2).
 - (b) The cabinet may issue up to three (3) notices of deficiency during the ninety (90) day period.
 - (c) The cabinet may require the governing body to repeat the public information process established in this administrative regulation for any plans significantly modified during the review process.
- (6) If the governing body fails to submit a plan, fails to correct all identified deficiencies, or fails to amend a plan in accordance with this administrative regulation, the cabinet shall take appropriate action, which may include one (1) or more of the following actions:
 - (a) Initiate enforcement proceedings against the governing body pursuant to KRS 224.10-420 and 224.10-440;
 - (b) Withhold any grants or monies for the area and the counties and cities located within the area pursuant to KRS 224.10-105 and KRS 224.43-340 until the governing body is in compliance with its plan, including grants and reimbursements awarded pursuant to KRS 224.43-505; and
 - (c) Prepare a plan for the governing body, conduct the public information procedure established in Section 2 of this administrative regulation, and charge the governing body all expenses incurred by the cabinet.

Section 4. Plan Amendment Process.

- (1) A plan may be amended upon either the initiative of the governing body of the solid waste management area or the cabinet if the current plan is inadequate because of new or revised information or to meet the requirements of KRS Chapter 224 and this administrative regulation.
- (2)
 - (a) If the cabinet makes a determination that an amendment to a plan is necessary pursuant to subsection (1) of this section, the cabinet shall inform the governing body in writing of the needed changes.
 - (b) The governing body shall have ninety (90) days to prepare and submit an amendment in accordance with subsection (5) of this section.
- (3)
 - (a) If the governing body makes a determination to amend its plan, the governing body shall prepare and submit to the cabinet a request to amend that contains the:
 1. Name of the county or area that intends to amend the plan;
 2. Name and address of the governing body;
 3. Name, address, and phone number of a contact person;
 4. Identification of the pages of the plan to be affected and a brief statement of the nature of the amendment; and

5. A written justification, desired outcome, implementation schedules, and the financial impact of the proposed amendment.

(b)

1. The cabinet shall review the request to amend within thirty (30) calendar days of receipt and determine if a plan amendment is necessary as established in subsection (2)(a) of this section. If the plan amendment is not necessary, the cabinet shall inform the governing body that no amendment is required.

2. If a plan amendment is necessary, the cabinet shall notify the governing body to proceed with the amendment process in accordance with subsections (4) and (5) of this section.

(4)

(a) The governing body shall publish a public notice regarding the proposed amendment to its plan in accordance with Section 2 of this administrative regulation unless the cabinet informs the governing body in writing that a public notice is not necessary. The cabinet shall not require the governing body to publish a public notice if the proposed amendment is to:

1. Correct a clerical error;
2. Correct a typographical error;
3. Change the name, address, or phone number of a person identified in the plan;
4. Make revisions to solid waste ordinances pertaining to changes in waste haulers, franchise agreements, or similar service changes in which services are revised and a public notice and comment period have already been conducted as part of the local ordinance approval process; or
5. Make similar minor administrative changes.

(b) Solid waste plan amendments that require the governing body to undertake the public information process established in Section 2 of this administrative regulation, shall include any solid waste plan amendment that:

1. Increases fees to the public;
2. Diminishes services to the public;
3. Closes a solid waste facility;
4. Establishes a new solid waste facility;
5. Expands the size or capacity of an existing facility;
6. Changes the location of a solid waste facility or;
7. Other similar changes to facilities or services that affect the public.

(5) Upon approval by the governing body of the proposed plan amendment, the governing body shall submit to the cabinet:

- (a) A copy of each page of the plan that is being amended;
- (b) A copy of the public notice, as published, from each newspaper that published the notice verifying the date of publication;
- (c) A copy of the ordinance, resolution, or administrative regulation of the governing body approving the amendment and its submission to the cabinet;
- (d) Copies of any ordinances, resolutions, or administrative regulations approving the amendment by the first or second class city governing body that developed its portion of the plan, if required;
- (e) Copies of any agreements or contracts relating to the plan amendment, if applicable;
- (f) Copies of any proposed ordinances, resolutions, administrative regulations, or by-laws relating to the plan amendment, if applicable; and
- (g) Upon request, additional documentation necessary for the cabinet to determine that the plan amendment process procedure was properly followed.

(6) The cabinet shall inform the governing body in writing of the cabinet's decision to approve or disapprove the amendment to the plan.

Section 5. Plan Update Process.

- (1) The governing body shall submit to the cabinet for reapproval of an updated plan on or before October 1, 2007, and every five (5) years thereafter.
- (2) The plan update shall be subject to the public information procedures of Section 2 of this administrative regulation.
- (3) The cabinet shall review the plan update in accordance with Section 3 of this administrative regulation.

Section 6. Implementation of the Plan.

- (1) Each governing body shall implement its plan as approved by the cabinet pursuant to KRS 224.43-345.
- (2) If a governing body fails to implement an approved plan, the cabinet:
 - (a) Shall not endorse projects that generate solid waste pursuant to the Kentucky intergovernmental review process for the area and the counties and cities located in the area pursuant to KRS 224.43-340 until the governing body is in compliance with its plan;
 - (b) May withhold any grants, loans or other monies for any grant applicant located in the area pursuant to KRS 224.10-105, including grants and reimbursements awarded pursuant to KRS 224.43-505, until the governing body is in compliance with the governing body's plan; and
 - (c) May initiate enforcement proceedings against the governing body. Enforcement proceedings shall be pursuant to KRS 224.10-420 and 224.10-440.

Section 7. Annual Reports.

- (1) The annual report, established in KRS 224.43-310(5), shall be prepared by the governing body of each solid waste management area. The report shall be sent to the cabinet.
- (2) The annual report shall be prepared and formatted using the Solid Waste Management Area Annual Report, DEP 6061.

Section 8. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "Guidance for Preparing a Solid Waste Management Area Plan 5-Year Update", DEP 6062, March 2017; and
 - (b) "Solid Waste Management Area Annual Report ", DEP 6061, July 2017.
 - (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Waste Management, 300 Sower Boulevard, Second Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.
 - (3) This material may also be obtained on the division's Web site at eec.ky.gov/environmental-protection/waste.
- (19 Ky.R. 330; 780; eff. 9-23-1992; 31 Ky.R. 371; 1237; eff. 1-21-2005; TAm eff. 7-8-2016; TAm eff. 12-21-2016; 43 Ky.R. 2202; 44 Ky.R. 521; eff. 9-7-2017; Crt eff. 9-5-2018; TAm eff. 5-7-2019.)