

## SUGGESTED SUBSTITUTE

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### ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management

#### 401 KAR 45:040. Modification, transfer or revocation of special waste permits.

RELATES TO: KRS ~~224.1~~[224.04], 224.10, 224.40, 224.46, 224.50, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.40-330, 224.50-760(1)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS ~~224.50-760(1)(d) authorizes~~[Chapter 224 requires] the cabinet to ~~promulgate~~[adopt] administrative regulations for the management, processing, or disposal of wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain, ~~or allow~~[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 standards applicable to all special waste sites or facilities.]~~This administrative regulation ~~establishes~~[sets forth] the requirements for modification, transfer, and revocation of special waste permits ~~but does not establish standards for biosolids from the treatment of domestic sewage or sewage sludge from a treatment facility that are regulated pursuant to 401 KAR 45:105.~~

#### Section 1. Modification of Permits.

(1) A special waste site or facility permit may be modified during its term. **Modification shall be conducted** in accordance with this administrative regulation.

(a) If a permit is modified, only the conditions **that relate to the**[subject to] modification shall be reopened. A permit modification shall **comply with public notification requirements unless**[be subject to public notice unless the cabinet determines] the modification does not present a threat to human health and the environment[~~may be subject to public notice if the cabinet believes a significant degree of public interest exists with respect to an application~~].

(b) An application to modify a permit for a horizontal expansion beyond the permitted waste boundary shall require a public notice in accordance with 401 KAR 45:050.

(2)[(4)] Modification of formal permits. Modifications requested by the permittee shall not be considered by the cabinet until the permittee has submitted a complete application to the cabinet that is appropriate for the type of facility being modified. The permittee shall use:

(a) ["]Application for a Special Waste Landfill Permit,["] form DEP7094A, **incorporated by reference in 401 KAR 45:030;**

(b) ["]Application for a Special Waste Landfarming Facility Permit,["] form DEP7021B, **incorporated by reference in 401 KAR 45:030;**

(c) ["]Application for a Special Waste Composting Facility **Permit**,["] form DEP 7094D, **incorporated by reference in 401 KAR 45:030;** or

(d) ["]Application for a Research, Development, and Demonstration Permit,["] form DEP 7094B, **incorporated by reference in 401 KAR 45:135.**

(3) **[Forms in paragraphs (a) through (c) of subsection (2) are incorporated by reference in 401 KAR 45:030. The form in paragraph (d) of subsection (2) is incorporated by reference in 401 KAR 45:135.]**[form DEP 7094A entitled "Application for a Special Waste Landfill Permit," form DEP 7021B entitled "Application for a Special Waste Landfarming Facility Permit" or form DEP 7094D entitled "Application for a Special Waste Composting Facility" which are incorporated by reference in Section 2

of 401 KAR 45:030, or has submitted form DEP 7094B entitled "Application for a Research, Development, and Demonstration Permit" that is incorporated by reference in Section 2 of 401 KAR 45:135. The permittee shall complete the applicable sections of the application as directed by the cabinet.]

~~[(4)]~~[(2)] Modification of a registered permit-by-rule. Registrants requesting a modification shall submit a new registration form in accordance with ~~[Section 4 of]~~401 KAR 45:070, **Section 4**.

~~[(4)]~~[(5)][(3)] Causes for modification. ~~[The following paragraphs list]~~ Causes for modification of formal permits by the cabinet **shall include**:

(a) Material and substantial alterations or additions to the permitted special waste site or facility ~~[are]~~ being contemplated that justify new permit conditions that are different or absent in the existing permit;

(b) ~~A~~~~[The]~~ cabinet **determination**~~[determines]~~ that the special waste site or facility, as previously permitted, is not likely to comply with 401 KAR 30:031;

(c) ~~[The cabinet determines]~~ Good cause exists for modification of a compliance schedule, such as an act of God, **labor** strike, ~~[flood,~~ materials shortage, or other events over which the permittee has little or no control and for which there is no reasonable available remedy;

(d) Modification of a closure plan **if required by 401 KAR Chapter 45**~~[is required under this chapter]~~;

(e) The cabinet **receiving**~~[receives]~~ notification of expected closure and **finding**~~[finds]~~ that one (1) or more~~[any]~~ of the permit conditions are no longer warranted;

(f) **Cabinet adjustment of**~~[The cabinet adjusts]~~ the level of financial responsibility required pursuant to 401 KAR 45:080;

(g) ~~[The]~~ Corrective action program, **as included**~~[specified]~~ in the permit, **failure to bring**~~[has not brought]~~ the waste site or facility into compliance with the groundwater protection standards **as established in 401 KAR 45:160, Section 5**~~[within a reasonable period of time]~~;

(h) ~~[To include]~~ A monitoring program meeting the requirements of 401 KAR 45:160;

(i) **Approval of**~~[To approve]~~ a corrective action plan required by 401 KAR 45:160;

(j) ~~[To include]~~ Conditions applicable in new or amended statutes and administrative regulations;

(k) Modification ~~[is]~~ necessary to protect human health or the environment;

(l) ~~[To include]~~ Conditions applicable as a result of a hearing or enforcement action as **established**~~[specified]~~ in 401 KAR Chapter 40;

(m) **Change of** ownership of the special waste site or facility~~[changes]~~;

(n) **Expansion of**~~[To expand]~~ the capacity of a special waste site or facility; or

(o) **Addition of**~~[To add]~~ a new waste that contains different chemical characteristics than the waste source previously permitted.

## Section 2. Procedures for Permit Modification.

(1) A permit for a special waste site or facility may be modified either at the request of the permittee or upon the cabinet's initiative.

(2) If the permittee requests the modification, the cabinet shall determine~~[decides]~~ **if**~~[whether]~~ the request is justified in accordance with Section 1 of this administrative regulation~~[or for other good cause shown]~~. If the cabinet determines not to modify the permit, **the cabinet**~~[it]~~ shall notify the permittee in writing and give a reason for the decision.

(3) If the cabinet makes a preliminary decision to modify a permit under this administrative regulation, then the cabinet shall prepare a draft modified permit incorporating the proposed changes. If the permit modification **requires**~~[is subject to]~~ public notice~~[requirements]~~, the permittee shall publish a notice in accordance with ~~[Section 4 of]~~401 KAR 45:050, **Section 4**.

- (4) The cabinet shall provide the permittee with a copy of the draft modified permit and allow ten (10) working days for comment. Comments received from the permittee shall be considered in finalizing the draft modified permit.
- (5) The cabinet shall issue the modified permit after consideration of the comments or following the ten (10) day comment period if no comments are received.
- (6) The owners or operators of a special waste site or facility may request a hearing. **A hearing shall be requested** pursuant to KRS 224.10-420 within thirty (30) days of issuance of the permit modification by the cabinet.
- (7) All terms of an existing permit **shall** remain in effect during the permit modification request.
- (8) A permit modification requesting a horizontal expansion shall **comply with**~~[be subject to]~~ the requirements of public notice in accordance with 401 KAR 45:050. All draft permits for horizontal expansions shall be prepared **as established in**~~[under Sections 8 and 9 of]~~ 401 KAR 45:030, **Sections 8 and 9**, and shall be based on the administrative record required by ~~[Section 3 of]~~ 401 KAR 45:050, **Section 3**.

### Section 3. Transfer of Permits.

- (1) A permit **shall not be transferred**~~[is not transferable]~~ to any person without prior approval of the cabinet **based on the submitted application**. ~~[For purposes of this section,]~~ **A person requesting to transfer a formal permit for an existing special waste site or facility shall submit a completed Application to Transfer Special Waste Permit, form DEP 7094C. The**~~[permit transfer]~~ application **shall be**~~[is]~~ required if a person requests that the name on the permit be changed to a different person or entity or if the permittee is a corporation and fifty-one (51) percent or more of the stock is sold to a person who was not previously a stockholder, or was a stockholder owning less than five (5) percent of the stock.
- (2) ~~[A person requesting to transfer a formal permit for an existing special waste site or facility shall submit]~~~~[use form DEP 7094C entitled]~~~~[ "Application To Transfer Special Waste Permit" form DEP 7094C.]~~~~[(November 2016). The requirements contained in the transfer application are incorporated in this administrative regulation by reference. The cabinet may require that additional information be included in the application to ensure that the prospective owner or operator complies with the requirements of this chapter. The transfer application form may be obtained from the Division of Waste Management, 300 Sewer 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.]~~  
**On the basis of the submitted application,**~~[(3)]~~ the cabinet shall make a preliminary determination to approve or disapprove a formal permit transfer within 180 calendar days from the initial receipt of the application.  
~~[(3)]~~~~[(4)]~~ If the transfer application is incomplete, the cabinet shall notify the applicant in writing of all the deficiencies. Periods of deficiency shall not be counted against the review time frame **established**~~[specified]~~ in subsection (3) of this section. Failure to submit ~~[any required]~~ information noted by the cabinet related to the deficiencies within ninety (90) calendar days of receipt of the notice of deficiency **shall be**~~[is]~~ grounds for disapproval of the transfer application.  
~~[(4)]~~~~[(5)]~~ If the cabinet makes a preliminary determination to approve the transfer application, the applicant shall publish a public notice in accordance with ~~[Section 4 of]~~ 401 KAR 45:050, **Section 4**.  
~~[(5)]~~~~[(6)]~~ After the public notice has been published by the applicant, the cabinet shall provide a public comment period in accordance with ~~[Sections 5 to 8 of]~~ 401 KAR 45:050, **Sections 5 through 8**.

~~(6)~~~~(7)~~ After the close of the public comment period, the cabinet shall make a final decision on the transfer application, ***based on the submitted application.***

~~(7)~~~~(8)~~ A person requesting to transfer a registered permit-by-rule shall submit a registration in accordance with ~~[Section 2 of]~~401 KAR 45:070, ***Section 2.***

Section 4. Modification, Suspension, and Revocation of a Permit. ***(1)*** The cabinet may modify, suspend, or revoke a permit issued under this chapter for:~~[ the items listed in subsections (1) through (7).]~~

***(a)***~~(1)~~ Violation of any requirement of KRS Chapter 224, ***401 KAR Chapter 45***~~[this chapter]~~, or 401 KAR 30:031;~~;~~

***(b)***~~(2)~~ Aiding, abetting, or ***allowing***~~[permitting]~~ the violation of KRS Chapter 224, ***401 KAR Chapter 45***~~[this chapter]~~, or 401 KAR 30:031;~~;~~

***(c)***~~(3)~~ Any action or omission associated with maintenance and operation of the facility that could or does create a threat to public health or the environment;~~;~~

***(d)***~~(4)~~ Violations of a condition or a variance of the special waste site or facility permit;~~;~~

***(e)***~~(5)~~ Misrepresentation or omission of a significant fact by the owner or operator either in the application for the permit or in information subsequently reported to the cabinet;~~;~~

***(f)***~~(6)~~ Failure to comply with an order issued by the cabinet; ***or***~~;~~

***(g)*** ***Transfer of***~~(7)~~ the facility ~~[is transferred]~~ to another person without prior approval of the cabinet.

***(2)***~~(8)~~ The cabinet shall follow the applicable procedures in this administrative regulation and 401 KAR Chapter 40 in revoking any permit under this section.

***(3)***~~(9)~~ If a permit is revoked, the owner or operator may reapply.

***(4)***~~(10)~~ Owners or operators of special waste sites or facilities may file a request for a hearing. ***A request shall be*** pursuant to KRS 224.10-420 upon revocation of the permit.

#### Section 5. Incorporation by Reference.

***(1)*** "Application To Transfer Special Waste Permit", form DEP 7094C ~~[November 2016]~~, is incorporated by reference.

***(2)*** This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 300 Sower Boulevard, 2nd 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](http://eec.ky.gov/environmental-protection/waste).

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