

SUGGESTED SUBSTITUTE

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

401 KAR 45:140. Conditions applicable to all special waste permits.

RELATES TO: KRS ~~224.1~~^[224.01], 224.10, 224.40, 224.46, 224.50, 224.99
STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760~~(1)(d)~~^{(1)(d)}
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.50-760(1)(d) authorizes ~~Chapter 224~~ requires, or 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~~^[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 conditions applicable to all special waste permits.

Section 1. Conditions Applicable to All Permits. The conditions applicable to a special waste site or facility shall be incorporated into the permit either expressly or by reference.

- (1) Duty to comply. The owner or operator shall comply with all conditions of the permit and all approved plans in the permit application. Any permit noncompliance ~~shall constitute~~^[constitutes] a violation of the appropriate requirement in KRS Chapter 224~~[Kentucky Revised Statute]~~ and ~~shall be~~^[is] grounds for enforcement action that may result in revocation, modification, or denial of a permit application.
- (2) Duty to reapply. If the owner or operator wishes to continue an activity regulated by the permit after the expiration date of the permit, ~~then~~^[if applicable,] the owner or operator shall apply for and obtain a new permit.
- (3) Duty to halt or reduce activity. It shall not be a defense for an owner or operator in an enforcement action to claim necessity to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit. The owner or operator shall comply with 401 KAR Chapter 45~~[this chapter]~~ before commencing operations.
- (4) Duty to mitigate. In the event of noncompliance with the permit, the owner or operator shall take all reasonable steps to minimize releases to the environment, and shall carry out ~~[such]~~^[such] measures ~~that~~^[as] are reasonable to prevent ~~additional releases or other noncompliances with 401 KAR Chapter 45 and KRS 224.50-760~~^[significant adverse impacts on human health and the environment].
- (5) Proper operation and maintenance. The owner or operator shall at all times properly operate and maintain all facilities and systems of treatment and control that are installed or used by the owner or operator to achieve compliance with the conditions of the permit. Proper operation and maintenance ~~shall include~~^[includes]:
 - (a) Effective performance;^[i]
 - (b) Adequate funding;^[i]
 - (c) Adequate operator staffing and training;^[i] and
 - (d) Process controls, including appropriate quality assurance procedures.
- (6) Permit actions. The permit may be modified or revoked due to ~~noncompliance~~^[non-compliances] with the provisions of 401 KAR Chapter 45 ~~or~~^[this chapter and] KRS 224.50-760~~[Chapter 50]~~^{[for}

cause.] The filing of a request by the owner or operator for a permit modification, revocation, or termination, or a notification of planned changes or anticipated noncompliance, shall not stay any permit condition.

(7) Property rights. The permit shall not convey any property rights or any exclusive privilege.

(8) Duty to provide information. The owner or operator shall **provide**[**furnish**] the cabinet with [any] information that the cabinet reasonably requests to determine **if**[**whether**] cause exists for modifying, revoking, or terminating the permit, or to determine compliance with the permit or [any provision of KRS Chapter 224 or] **401 KAR Chapter 45**[**this chapter**]. The owner or operator shall [also **submit**]**[furnish]** to the cabinet upon request, copies of records required **under the conditions of the permit** to be kept by the permittee.

(9) Inspection and entry. The owner or operator shall allow the cabinet **[or its authorized representative]** to:

(a) Enter upon the owner's or operator's premises where a regulated facility or activity is located or conducted, or where records are kept under the conditions of the permit;

(b) Have access to and copy at reasonable times any records that are kept under the conditions of the permit;

(c) Inspect any facility's equipment, including monitoring and control equipment, practices, or operations regulated or required under the permit; and

(d) Sample or monitor, for the purposes of assuring permit compliance or determining compliance with KRS Chapter 224 or **401 KAR Chapter 45**[**this chapter**], any substances or parameters within the boundaries of the permitted area and outside the boundaries of the permitted area if necessary to determine the environmental impacts resulting from a permitted activity[at any location].

(10) Signatory requirement. All applications, reports, and information submitted to the cabinet shall be signed and certified in accordance with **[Section 10 of]**401 KAR 45:030, **Section 10**.

(11) Authorization to operate. For a new special waste site or facility, or a facility undergoing an expansion or modification as stated in 401 KAR 45:040, the owner or operator shall not commence storage, treatment, or disposal of special waste in the modified portion of the facility until:

(a) The owner or operator has submitted to the cabinet, by certified mail or hand delivery, a request for the issuance of a construction and operation[construction/operation] permit signed by the owner or operator stating that the facility has been constructed or modified in compliance with the construction permit. The request shall be accompanied by a fee **established**[**specified**] in **[Section 2(1)(d) of]**401 KAR 45:250, **Section 2(1)(d)**; and

(b) The cabinet has inspected the newly constructed or modified facility and issued a special waste construction and operation[construction/operation] permit or modified **[construction/operation]** permit.

(12) Transfers. The permit shall not be transferable to any person without prior approval of the cabinet. Proposed new owners or operators shall submit a complete transfer permit application to the cabinet in accordance with **[Section 3 of]**401 KAR 45:040, **Section 3**.

(13) Monitoring reports. Monitoring results shall be reported at the intervals **established**[**specified**] in the approved permit application.

(14) Compliance schedules. Reports of compliance with, or any progress reports on, requirements contained in any compliance schedule of the permit shall be submitted no later than fourteen (14) days following each scheduled date.

(15) Reports. **[Periodic]** Reports **[as]** required in **401 KAR Chapter 45**[**this chapter**] or in the permit shall be submitted to the cabinet on the dates required in **401 KAR Chapter 45**[**this chapter**] or in the permit [on a timely basis].

(16) Other information. If the owner or operator fails to submit any relevant facts in a permit application, or submits incorrect information in a permit application or in any report to the cabinet, the owner or operator[he] shall promptly submit the facts or correct information.

Section 2.

(1) Establishing Permit Conditions. In addition to conditions required for all permits in Section 1 of this administrative regulation, the cabinet shall establish conditions on a case-by-case basis in permits to ensure compliance with the requirements of 401 KAR Chapter 45[~~this chapter~~].

(2) The cabinet may incorporate applicable requirements directly into the permit. Each special waste permit issued by the cabinet shall contain conditions as the cabinet determines necessary to assist in compliance with the approved application and 401 KAR Chapter 45[~~this chapter~~] ~~protect human health and the environment~~.

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