

SUGGESTED SUBSTITUTE – TO AMENDED AFTER COMMENTS VERSION

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

401 KAR 103:010. Notification and transfer procedures for merchant electric generating facilities.

RELATES TO: KRS 224.10-100, 224.10-285, 224.43-345, **224.99-010**, 278.700 - 278.716

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.10-100(30), (31), 224.10-285, ~~[224.43-345,]~~ 278.710(3) ~~–[,(4),]~~ (5), (7) - (10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.10-285(2) requires the Energy and Environment Cabinet to establish monitoring and enforcement requirements for the obligation **established[set for]** in KRS 278.710(3) **through[,(4),]** (5) **and[;]** (7) through (10) and 224.10-100(30) and (31). KRS 224.10-100(30) requires the Energy and Environment Cabinet to monitor and enforce compliance of a merchant electric generating entity to which a construction certificate has been issued and has generated pursuant to obligations **established[set forth]** in KRS 278.710(3) **through[,(4),]** (5) **and[;]** (7) through (10). This administrative regulation establishes procedures for requirements concerning notifications, transfers of ownership, annual fees, and reporting **pertaining to merchant electric generating facilities.**

Section 1. Notification Procedures. ~~[An applicant or person who has received]~~ A construction certificate **holder of[for]** a merchant electric generating facility shall:

- (1) File with the cabinet, **and completed and notarized** MEGF Construction-Operating Notification Form, DWM 4658, on or prior to the date upon which:
 - (a) Construction commences **or is complete;**
 - (b) Generation of electricity for sale begins;
 - (c) Permanent cessation of electric generation;
 - (d) Start of decommissioning plan implementation; and
 - (e) Facility ceases construction or generation for thirty (30) consecutive days after the MEGF commencement of construction;~~;~~
- (2) **For a[MEGF that received a]** construction certificate **received by an MEGF** prior to June 29, 2023, shall **comply with the[be subject to]** requirements of subsection one (1) of this section. The notice shall be submitted no later than **July 15, 2024; and[ten (10) days after these administrative regulations take effect.]**
- (3) Provide all filings pursuant to ~~[Section 3 of]~~ KRS 278.710(3).

Section 2. Ownership Transfer Procedures.

- (1) The applicant and **construction certificate holder or person who controls or owns the right to control the MEGF[existing owner-operator]** shall file **a completed and notarized[the]** MEGF Notice of Ownership Transfer Form, DW4652, including all required attachments, to provide notice to the cabinet of any pending or final transaction pursuant to KRS 278.710(3)(d) no later than ten (10) days prior to completing the transaction.

(2) Pursuant to KRS 278.710, upon transfer or sale of ownership, control, or the right to control the MEGF, a successor shall submit an updated or revised copy of the decommissioning plan, if applicable, pursuant to KRS 278.710(8).

(3) Transfer pursuant to KRS 278.710 shall not cause a lapse in financial assurance for the approved decommissioning plan.

(a) If the existing financial assurance previously filed with the cabinet pursuant to KRS 278.710 will continue to secure the approved decommissioning plan after transfer occurs, the ~~[applicant and]~~successor **and construction certificate holder or person who controls or owns the right to control the MEGF** shall jointly execute a certification of financial assurance ~~indicated~~**[denoted]** on the form in subsection (1) of this section; or

(b) Tender a proposed replacement financial assurance pursuant to 401 KAR 103:030, the existing financial assurance.

(4) **The annual fees established in**~~[A check, money order, or electronic funds transfer for annual fees in accordance with]~~ Section 4 of this administrative regulation **shall be**~~[,]~~ made payable to the Kentucky State Treasurer **by check, money order, or electronic funds transfer**.

(5)

(a) The **construction certificate holder**~~[owner-operator]~~ shall remain responsible **for obligations** pursuant to the **construction certificate and** decommissioning plan until the cabinet deems that ~~[both]~~the ~~[owner-operators and successors]~~MEGF Notice of Ownership Transfer Form, DW4652, including all required attachments, submitted pursuant to subsections (1) and (2) of this section are complete and any replacement financial assurance is deemed adequate to cover decommissioning cost.

(b) The cabinet shall have sixty (60) days to review and accept all submissions required of this section.

(c)

1. If the cabinet determines that any submissions required of this section are deficient, **pursuant to KRS 278.710(3), (4), and (7), the cabinet**~~[it]~~ shall send the **applicant and construction certificate holder**~~[owner-operator and successor]~~ a written notice **stating**~~[describing]~~ the deficiencies and stating the transfer is not accepted as complete, pursuant to KRS 278.710(5); and

2. The **applicant and construction certificate holder**~~[owner-operator and successor]~~ shall have thirty (30) calendar days from the date the cabinet issues a written deficiency to respond with information that will cure the deficiency. Failure to respond to the notice of deficiency shall be grounds for the cabinet to withhold the **existing**~~[original]~~ financial assurance until the deficiency is addressed and accepted by the cabinet.

3. The **deadline established**~~[timetable specified]~~ in paragraph (b) of this subsection shall toll from the date the cabinet issues a written notice of deficiency pursuant to subparagraph 1. of this paragraph until the **applicant and construction certificate holder**~~[owner-operator and successor]~~ submit a response required by subparagraph 2. of this paragraph.

Section 3. Decommissioning Notification.

(1) Upon permanent cessation of the generation of electricity, the **construction certificate holder, or**~~[owner-operator,]~~ person who controls or owns the right to control the MEGF shall file **a completed and notarized** MEGF Construction-Operating Notification Form, DWM 4658, notifying the cabinet within thirty (30) days of cessation. This notification shall serve as the start date for decommissioning to begin.

(2) Pursuant to KRS 224.10-285(1)~~[401-KAR 30:020(2)]~~, unless a written request is submitted to the cabinet, failure to fully implement the decommissioning plan within eighteen (18) months ***shall constitute***~~*will be considered*~~ abandonment.

Section 4. Annual Fee.

(1) Fees collected pursuant to this section shall be used for administrative, compliance, and enforcement purposes ***as established in 401 KAR Chapter 103***~~*specified in this Chapter*~~ and ~~[in-]~~KRS 224.10-285.

(2) The cabinet ***shall***~~*will*~~ provide the ***construction certificate holder or person who controls or owns the right to control the MEGF***~~*applicant*~~ with the MEGF Annual Fee Form, DWM 4656.

(a) ***The construction certificate holder or person who controls or owns the right to control the MEGF shall submit a fee amount of \$6,000 no later than May 31 of each year for each MEGF in operation or decommissioning status.***~~*Based on the manufacturer's nameplate-rated capacity in the approved construction certificate, the annual fee is established pursuant to the table in paragraph (b) of this subsection.*~~

(b)

[<i>MEGF Generating Capacity</i>]	[<i>Annual Fee</i>]
[<i>≥10 MW up to and including 75 MW</i>]	[<i>\$4,000</i>]
[<i>>75 MW up to and including 150 MW</i>]	[<i>\$8,000</i>]
[<i>>150 MW</i>]	[<i>\$12,000</i>]

~~[(c)]~~ If the ***construction certificate holder***~~*owner-operator,*~~ or person who controls or owns the right to control fails to submit the annual fee required, ~~*may be subject to*~~ civil penalties ***may apply and, if applied, shall be*** pursuant to KRS 224.99-010~~(16)~~.

~~(3)~~ ~~*The owner-operator, or person who controls or owns the right to control the MEGF shall submit the annual fee no later than May 31 of each year for each MEGF in operation or decommissioning status.*~~

~~[(4)]~~

(a) The ***construction certificate holder***~~*applicant, owner-operator,*~~ or person who controls or owns the right to control the MEGF may request an extension to the annual fee deadline.

(b) The extension request shall be in writing stating the reasons therefore, and shall be received by the Solid Waste Branch of the Division of Waste Management ten (10) days prior to the deadline.

(c) ~~*If granted,*~~ The extension shall not exceed thirty (30) days.

Section 5. Reports. The ***construction certificate holder***~~*owner-operator,*~~ or person who controls or owns the right to control the MEGF shall submit an annual report for a recordkeeping and reporting system.~~*The annual report shall meet the following requirements:*~~

(1) The MEGF shall submit ***the annual report*** to the cabinet, no later than the first anniversary of commencement of construction and every year thereafter no later than May 31. The report shall be submitted with the ***completed and notarized*** Merchant Electric Generating Facility Annual Report or Decommissioning Plan Update Form, DWM 4657, including all required attachments, and shall contain~~*the following*~~:

(a) ***A*** description of construction activities during the year;

(b) ***A*** description of compliance with mitigation measures;

(c) ***A*** description of operation maintenance activities;

(d) The date and quantity of system components taken out of service;

(e) The date of when and where system components disposed or recycled; and

- (f) The quantity of system components disposed or recycled.
- (2) The annual report shall be certified by the **construction certificate holder**~~[owner-operator]~~, ensuring the MEGF is in compliance with all mitigation measures and requirements **included**~~[outlined]~~ in the construction certificate and decommissioning plan.
- (3) The **construction certificate holder**~~[owner-operator]~~, or person who controls or owns the right to control the MEGF shall retain records of all required monitoring information, mitigation measures, copies of site assessment reports and annual reports, and records of all data used to complete the application for the construction certificate and decommissioning plan updates, for a period of at least three (3) years from the date of the sample, measurement, report, certification, or application. ***[This period may be extended by request of the cabinet at any time.]***
- (4) The **construction certificate holder**~~[owner-operator]~~, or person who controls or owns the right to control the MEGF shall keep records of the source, approved disposal location, and quantity of any release of a hazardous substance, pollutant or contaminant, or a waste that is listed or characterized as hazardous pursuant to KRS 224.1-400 and **401 KAR** Chapter 39. These records shall be available for cabinet inspection.
- (5) **Failure by a construction certificate holder**~~[Owners-operators]~~, or **person who controls**~~[persons who control]~~ or own the right to control a merchant electric generating facility,~~[who fail]~~ to meet the requirements established in this administrative regulation ***shall be grounds for***~~[may be subject to]~~ penalties established in KRS 224.99-010**(16)**.

Section 6. Incorporation by Reference.

- (1) The following material is incorporated by reference:
- (a) "MEGF Construction-Operating Notification"~~["]~~ Form, DWM 4658, **March**~~[January]~~ **2024**~~[September 2023]~~.
- (b) "MEGF Notice of Ownership Transfer", form, DW4652, **January 2024**~~[September 2023]~~.
- (c) "MEGF Annual Report or Decommissioning Plan Update" Form, DWM 4657, **January 2024**~~[September 2023]~~; and
- (d) "MEGF Annual Fee" Form, DWM 4656, **January 2024**~~[September 2023]~~.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Waste Management, 300 Sower Boulevard, 2nd floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 5:00 p.m., from the Web site at eec.ky.gov/environmental-protection/waste.

CONTACT PERSON: Tyler Shields, Environmental Control Supervisor, Department for Environmental Protection, Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 782-5325, fax (502) 564-4245, email Tyler.Shields@ky.gov.

***General Reviewer's Note:** File one (1) clean and one (1) dirty copy for form DWM 4658, in conjunction with filing this suggested substitute.