

Statement of Consideration  
Relating to 401 KAR 103:005

Energy and Environment Cabinet, Department for Environmental Protection, Division of Waste Management  
(Amended After Comments)

I. The public hearing on 401 KAR 103:005, scheduled to be held virtually on December 21, 2023, at 10:00 a.m. was cancelled; however, written comments were received during the public comment period.

II. The following people submitted written comments:

<u>Name and Title</u>	<u>Agency/Organization/Entity/Other</u>
Tom Fitzgerald	Kentucky Resource Council
Amanda Stallings	National Grid Renewables Development, LLC
Stephanie Stumbo	NextEra Energy
Evan Vaughan	MAREC Action

III. The following people from the promulgating administrative body responded to the written comments:

<u>Name and Title</u>	<u>Agency/Organization/Entity/Other</u>
Tyler Shields, Environmental Control Supervisor	Division of Waste Management

IV. Summary of Comments and Responses

(1) Subject Matter: Typographical errors

(a) Comment: Tom Fitzgerald – The proposed regulations need to be carefully reviewed for typographical errors.

(b) Response: The proposed regulations were extensively reviewed for typographical errors, addressing concerns listed by the commentor and those caught by the Legislative Research Commission’s submission of suggested substitutes.

- (2) Subject Matter: Owner-operator definition.
- (a) Comment: Tom Fitzgerald – The term *owner-operator* should be limited to a manner consistent with KRS 278.710(10)
  - (b) Response: KRS 278.710(10) uses the term *owner-operator* to refer to the party responsible for removing discarded solar panels from the site. The promulgating agency has removed this term from the proposed regulation to avoid potential confusion of facility authority.
- (3) Subject Matter: Owner-operator definition.
- (a) Comment: Amanda Stallings – The term *owner-operator* is the predominant term in the proposed regulation for the person who has the responsibility for the overall operation (or construction or decommissioning, during those phases) of the MEGF; it should be consistently used throughout unless another person is the subject of a regulation.
  - (b) Response: The term *owner-operator* is intended to mean the owning entity of the merchant electric generating facility (MEGF) or the party responsible for overall operation of the MEGF, which can include contractors conducting operational activity. The promulgating agency has removed this term from the proposed regulation to provide clarity of responsibilities related to ownership and operations pursuant to KRS 278.706.
- (4) Subject Matter: Applicant definition.
- (a) Comment: Amanda Stallings – The definition for the term *applicant* should be revised as it omits some persons who might be applying for approval/review and includes aspects for which the term *owner-operator* or *successor* are more appropriate.
  - (b) Response: The term *applicant* is intended to mean any person who is seeking a transfer of a construction certificate for ownership or control, or rights and obligations under a construction certificate, of a constructed and generating MEGF, pursuant to KRS 278.710(3), (5), and (7). Persons who apply for the transfer of a construction certificate prior to the completion of construction and generation are under the authority of the Kentucky State Board of Electric Generation and Transmission Siting (board). The promulgating agency has amended the definition of *applicant* to reflect the intended purpose described above.
- (5) Subject Matter: Construction certificate holder definition.
- (a) Comment: Tom Fitzgerald – Create a definition for *construction certificate holder* to define the entity to whom the construction certificate was issued and who is responsible for compliance with any ongoing obligations imposed under the certificate, or any acquirer of the rights and obligations under the certificate approved by the Board in accordance with KRS 278.710(3)(b).
  - (b) Response: The promulgating agency has created a definition for the term *construction certificate holder* in order to clarify the party responsible for obligations and requirements imposed under the construction certificate. The

promulgating agency also amended the definition of *construction certificate* to reflect addition of *construction certificate holder*.

(6) Subject Matter: Decommissioning bond definition.

(a) Comment: Amanda Stallings – The term *decommissioning bond* is used only once, in the proposed administrative regulations; otherwise “*financial assurance*” or “*financial mechanism*” are used. Unless the term “*decommission(ing) bond*” is meant to narrowly refer to an approved surety bond for decommissioning purposes, then it need not be specifically defined and the term used should be *financial assurance mechanism*, which could be modified with approved where applicable. *Approved* should be dropped from the definition of *decommissioning bond* and should be used where *financial assurance mechanism* appears.

(b) Response: The term *decommissioning bond* is used in KRS 278.706 to describe financial assurance mechanisms as bonds or other similar securities. The promulgating agency has removed the term *decommissioning bond*, replacing it with *financial assurance mechanisms* pursuant to KRS 278.706.

(7) Subject Matter: Decommission definition.

(a) Comment: Amanda Stallings – The definition is an element of other defined terms (subsections (12), (14), (30)) and is the focus of proposed regulations 401 KAR 103:020 and 103:030. The definition(s) should be revised to be consistent with each other and not inappropriately limit certain circumstances or subsets of removal or restoration activities. Not all MEGFs are solar and solar MEGFs contain components and facilities that are not part of *solar panel systems*, yet the definition of *decommission* is restricted to “removal or closing of solar panel system at the end of the useful life.” Furthermore, the removal and restoration processes described in *decommission bond*, *decommission costs*, and *decommission plan* are all a bit different from each other, but are not limited to solar or to removal of facilities or components at the end of their useful life. A consistent definition of what is involved in decommissioning should be used for *decommission* and then other definitions can be referenced.

(b) Response: The term *decommission* is intended to mean the process of removal or closing of components and facilities at the end of their useful life. The term should not limit the type of facility or components associated with the facility. The promulgating agency has amended the definition for *decommission* to include all facilities and associated components that meet the term *merchant electric generating facilities*, pursuant to KRS 278.700.

(8) Subject Matter: Liability of decommissioning plan and bond requirements in relation to transfer of certificate holder.

(a) Comment: Tom Fitzgerald – When establishing a definition for construction certificate holder, clarify that any entity whom ownership, control, or the right control, has been transferred by the certificate holder, is jointly liable for decommissioning plan and bonding requirements, but the certificate holder remains responsible for those and other certificate requirements unless those

certificate obligations are also acquired by the new owner or controller of the facility on approval by the Board.

- (b) Response: According to KRS 278.710(3)(b) a person that has received a construction certificate for a merchant electric generating facility shall not transfer rights and obligation under the certificate without having first applied for and received a board determination that the acquirer has a good environmental compliance history, and has the financial, technical, and managerial capacity to meet the obligation imposed by the terms of approval or has the ability to contract to meet these obligations. Pursuant to KRS 278.710(5) any person who transfers or sells ownership, control, or the right to control a merchant electric generating facility shall remain liable for all existing decommissioning obligation and bond requirements until the person who acquires ownership, control, or the right to control the merchant electric generation facility files with the Energy and Environment Cabinet the documents required by subsection (4) of this section and they are accepted as complete by the secretary. The promulgating agency amended language related to liability, and to be in accordance with statute.

V. Summary of Statement of Consideration and Action Taken by Promulgating Administrative Body

The public hearing on this administrative regulation was cancelled; however, written comments were received. The Division of Waste Management responded to the comments and amends the administrative regulation as follows:

Page 2

Section 1(4)

Lines 1-3

After "the transfer of", insert the following:

**a construction certificate for control, or rights and obligations under**

After "ownership of a", insert the following:

**constructed and generating**

Delete "who received a construction certificate pursuant to KRS 278.710, or"

Delete "controlling rights, or ownership"

Page 2

Section 1(8)

Lines 8-11

Delete "Siting"

Delete "to an owner-operator, or persons who have controlling rights, of a merchant electric generating facility"

After "that authorizes", insert the following:

**a**

Delete "s" from persons

Page 2  
Section 1(9)  
Line 12

After "(9)", insert the following:

**"Construction certificate holder" means any person who received board approval to construct a merchant electric generating facility pursuant to KRS 278.710 or any person who received approval to acquirer rights and obligation under the construction certificate pursuant to KRS 278.710(3)(b)**

Page 2  
Section 1(10)  
Line 13

Insert the following:

**11**

Delete "10"

Page 2  
Section 1(11)  
Line 16

Insert the following:

**12**

Delete "11"

After "the process of", insert the following:

**removing components**

Delete "removal"

After "or closing of", insert the following:

**facilities**

Delete "solar panel system"

Page 2  
Section 1(12)  
Lines 18-21

Delete "(12) Decommission bond" or "Decommissioning bond" means an approved financial assurance mechanism used to guarantee the land used for a merchant electric generating facility will be returned to a substantially similar state upon decommissioning or abandonment of the project, unless otherwise requested by the landowner;"

Pages 2 and 3  
Section 1(13)  
Lines 23-2

After "connection with the", insert the following:

**decommissioning**

Delete "dismantlement, removal, and disposal of structures, systems, and components"

Delete "at the time of decommissioning"

Page 4  
Section 1(28)  
Lines 4-6

Delete "(28) Owner-operator" is defined as any person who owns a merchant electric generating facility or is responsible for overall operation of a merchant electric generating facility, including any contractor conducting operational activities;"

Page 4  
Section 1(29)  
Line 7

Insert the following:

28

Delete "29"

Page 4  
Section 1(30)  
Line 8

Insert the following:

29

Delete "30"

Page 4  
Section 1(31)  
Line 11

Insert the following:

30

Delete "31"

Page 4  
Section 1(32)  
Line 12

Insert the following:

31

Delete "32"

Page 4  
Section 1(33)  
Line 13

Insert the following:

32

Delete "33"

Page 4  
Section 1(34)  
Line 14

Insert the following:

33

Delete "34"

Page 4

Section 1(35)

Line 16

Insert the following:

34

Delete 35"

Page 4

Section 1(36)

Line 18

Insert the following:

35

Delete "36"

Page 4

Section 1(37)

Line 20

Insert the following:

36

Delete "37"

Statement of Consideration  
Relating to 401 KAR 103:010

Energy and Environment Cabinet, Department for Environmental Protection, Division of Waste  
Management  
(Amended After Comments)

I. The public hearing on 401 KAR 103:010, scheduled to be held virtually on December 21, 2023, at 10:00 a.m. was cancelled; however, written comments were received during the public comment period.

II. The following people submitted written comments:

<u>Name and Title</u>	<u>Agency/Organization/Entity/Other</u>
Tom Fitzgerald	Kentucky Resource Council
Tyler Shields	Division of Waste Management
Amanda Stallings	National Grid Renewables Development, LLC
Stephanie Stumbo	NextEra Energy
Evan Vaughan	MAREC Action

III. The following people from the promulgating administrative body responded to the written comments:

<u>Name and Title</u>	<u>Agency/Organization/Entity/Other</u>
Tyler Shields, Environmental Control Supervisor	Division of Waste Management

IV. Summary of Comments and Responses

- (1) Subject Matter: Annual fees for merchant electric generating facilities (MEGFs).
- (a) Comment: Amanda Stallings – This regulation proposes significant, tiered annual fees for MEGFs which appear disproportionate to the amount of time and Cabinet resources required to ensure compliance with certificate conditions, transfer obligations, and decommissioning plan duties. Fees exceed annual permit renewal fees for landfills, ranging from \$500 for composting facilities, Class 1 landfarming facilities, and lowest-usage/construction, landfills up to \$7,500 for a contained landfill. NG Renewables recommends that all MEGF projects regardless of size pay a \$4,000 annual fee.



- (b) Comment: Evan Vaughan – MAREC received concerns from member companies regarding annual fees, considering them to be unreasonably high to be assessed on an annual basis. The commentor recommends adjusting the fees to be assessed on a one-time basis (within some reasonable period after commencement of operations). To reduce the cost of regulation to the Energy and Environment Cabinet, review of solar project decommissioning costs and salvage value should occur once every five years as allowed by legislation. A five-year review period is widely adopted practice in other states, including in neighboring Ohio and West Virginia, for example, requires projects to submit a fee for a new application of \$100 per megawatt of nameplate generation capacity or a fee for any modification (to decommissioning plans or bond amounts) of \$50 per megawatt of nameplate generation capacity to be deposited into the Wind and Solar Decommissioning Account and utilized for implementing decommissioning rules.
- (c) Response: KRS 224.10-285 authorizes the cabinet to establish fee structure covering the entire useful life of a MEGF, to be charged to each facility for which the cabinet has monitoring and enforcement responsibilities. Pursuant to KRS 224.10-285, the fees collected shall be deposited into a restricted fund known as the Merchant Electric Generating Facility Monitoring and Enforcement Fund. Amounts deposited into the fund shall only be used to defray the costs of the cabinet's monitoring and enforcement responsibilities for MEGFs and for no other purposes. The cabinet estimates the cost to administer the program to total \$163,300 annually. The cabinet's estimation was determined by the resources required to implement and administer the program for the thirty-eight (38) merchant electric generating facilities cases filed at the time of drafting, pursuant to KRS 278.710 and KRS 224.10-285. Unlike other states, pursuant to KRS 278.710(7), the Energy and Environment Cabinet does not assume authority until these facilities are constructed and generating electricity; therefore, the application fee is submitted to the board and is not deposited into the MEGF monitoring and enforcement fund. Other programs that the cabinet administers which require annual renewal fees also provide an application fee, resulting in a reduced renewal fee. As it relates to other states, if the cabinet only required a modification fee (potentially every five years) the program would be immensely underfunded given the potential number of projects. In response to the comments received, the promulgating administrative body has amended the fee structure to require an annual fee of \$6,000 for all MEGFs in an effort to lower the financial burden on the facilities. The revised fee structure operates under the assumption that the Cabinet would conduct inspections as needed to meet requirements of KRS 278.710.

(2) Subject Matter: Record retention and inspection coordination.

- (a) Comment: Amanda Stallings – To ensure protection of associated documents, it is best if all records are kept in the offices of the owner-operator of the facility, and not on-site. Additionally, if the Cabinet conducts any inspection on the general site, then the inspection should be strictly coordinated with the owner-operator to ensure compliance with the National Electric Safety Code and best practices for Cabinet personnel safety.

- (b) Response: It is common practice for facilities to keep records on-site; additionally, maintaining these records on-site ensures records are up to date with ongoing maintenance and operation activities should equipment or structures become damaged or require replacement. As it relates to inspections, it is regular practice that the cabinet attempts to coordinate inspections of facilities, but the legislation does not require the cabinet to do so.
- (3) Subject Matter: Timeline to provide the Cabinet notice of pending or final transactions.
- (a) Comment: Evan Vaughan – MAREC respectfully requests more time, at least 30 days, to comply with this requirement as there are often complexities to legally complete transactions, or last-minute process delays, that could inadvertently cause parties to a transaction to miss the reporting period.
- (b) Response: KRS 278.710(3)(d) requires that a MEGF file a notice of any transaction involving the transfer or sale of ownership, control, or the right to control the MEGF, with lessors of property where the MEGF is located, the Energy and Environment Cabinet, the county judge/executive of a county and, if applicable, the mayor of a municipality in which the MEGF is located, within ten (10) days of completing the transaction. The Cabinet acknowledges that these transfers operate on a fluid timeline, but the Cabinet cannot allow for an extended window of notification as it would contradict statute. The regulation includes language to allow the MEGF owner, controller, or person who owns the right to control, to provide the Cabinet with notice a pending transaction, thus once the transaction is complete the entity can comply with statutory requirements.
- (4) Subject Matter: Updates to decommissioning plan regarding ownership transfer.
- (a) Comment: Stephanie Stumbo – Would an owner operator need to revise or update the copy of the decommissioning plan if the transfer is to one of its own affiliates or for purposes of financing? These financing transfers would represent a change in ownership interest, but it would be a passive, non-controlling interest in the project, or would this just be some statement of acknowledgment of the existing plan and the affiliates obligation to assure its completion?
- (b) Response: Pursuant to KRS 278.710(4) a person that has acquired ownership, control, or the right to control a MEGF from the applicant or its successor or assign shall file with the Energy and Environment Cabinet within ten (10) days of completing the acquisition: a written consent to assume obligations set forth in the decommissioning plan as of the date the acquisition occurred; and a notice of adoption of an existing bond or similar security previously filed to subsection (3)(a) of this section or a replacement bond or other similar security that complies with KRS 278.706(2)(m)5. Given that there would be a change in ownership of obligations for the facility, the acquirer would be required to comply with requirements of KRS 278.710(4).
- (5) Subject Matter: System components defined for the purpose of regulation/forms and as used in Section (5)(1)(d)(e)(f).

- (a) Could there be a threshold of component costs or defining or clarifying this as solar generating equipment? Not sure anyone in the industry sector has this granularity of components taken out of service, and how owner-operators would respond is dependent on the definition of system components.
  - (b) Response: Components are defined in 401 KAR 103:005, as either solar panels or ancillary equipment of a solar array or solar panel system, or a constituent part. The cost of component removal should be included in the decommissioning plan. While there will be ongoing maintenance during operation (retrofitting, replacing damaged components, etc.) the MEGF owner, controller, or person with the right to control should maintain record of components that are taken out of service and disposed of, to limit Cabinet inspections. The reporting requirements will reduce cabinet regulatory costs, therefore, lowering fees required by KRS 224.10-285.
- (6) Subject Matter: DWM 4657 Form.
- (a) Comment: Stephanie Stumbo – Seeking clarification on what exactly is meant by the reporting requirement for the tonnage of waste? How is the industry measure tonnage of waste generated on that particular site? Given that doesn't really exist now- defining the system components mentioned above would be helpful as the industry could develop estimates of tonnage based on quantity of solar "system components" at a given or specific site. Is this deemed as hazardous waste or all waste? Is this similar to or parity with the states requirements for the disposal of solar panels installed for residential use or other solar installations by utilities or private industries once those achieve their usage life? Is this to confirm all material, less those specifically requested to be retained by the landowner have been removed in accordance with the decommissioning plan?
  - (b) Response: The Energy and Environment Cabinet does not regulate residential use or other solar installations by utilities or private industries, that do not meet the merchant electric generating facility definition. It is the responsibility of the MEGF to characterize and report on all waste generated by the facility. When disposing of generated waste, disposal locations should provide MEGF's with a receipt or ticket that includes the tonnage of waste disposed. The intent of this form is to report all waste generated and disposed, not less those specifically requested to be retained by the landowner. Additionally, this form is not a substitute for reporting requirements within 401 KAR Chapter 39 and MEGF's that generate hazardous waste must adhere to federal and state requirements.
- (7) Subject Matter: Typographical errors.
- (a) Comment: Tom Fitzgerald – The proposed regulations need to be carefully reviewed for typographical errors. The proposed regulation suffers from the same problems in the necessity, function, and conformity section as identified in other regulations.
  - (b) Response: The proposed regulations were extensively reviewed for typographical errors, addressing concerns and those caught by the Legislative Research Commission's submission of suggested substitutes.

- (8) Subject Matter: Clarification of applicant, construction certificate holder, and person as it relates to liability of rights and obligations set forth in the construction certificate.
- (a) Comment: Tom Fitzgerald – A person that has received a construction certificate for a MEGF is no longer an “applicant” and should not be referred to as such. Under KRS 278.710(3), it is a person that has received the certificate that is obligated to undertake the actions listed in subsection (3)(a) through (d), and the proposed regulation should be revised, as should other regulations, to assure the term “applicant” is used only where it refers to an entity that has made application for something that has not yet been granted (or should make application for same) and that the term “person” or “construction certificate holder” is used, consistently with the statute, to refer the holder of a construction certificate issued by the Board.
  - (b) Response: The administrative body has amended the definition for the term applicant. This administrative regulation was amended to clarify appropriate parties associated with rights and obligations set forth in the construction certificate.
- (9) Subject Matter: Notification requirements for facilities that received a construction certificate prior to the effective date of HB-4 (June 29, 2023).
- (a) Comment: Tom Fitzgerald - KRC believes that the proposed notification regulation needs revision in order to address those facilities for which a construction certificate has been issued prior to the finalization of the regulations, and those which have already begun construction or generation. As written, Section 1(2) facilities that received a construction certificate prior to the effective date of HB-4 are subject to notification requirements. Yet no provision is made for the fact that when regulation is adopted, facilities that have received construction certificates may have already done one or more of the actions identified in Section 1(1)(a) or (b). Unless it is the intent of the cabinet that such facilities cease activity in order to file notices of actions that have already occurred, some additional explanation is needed that for facilities that have not yet begun the actions described in Section 1(1)(a) through (d), notice is required before commencement of such activities.
  - (b) Response: 401 KAR 103:010 Section 1(2) addresses facilities that received a construction certification prior to June 29, 2023, subjecting them to requirements within subsection (1) of the section. To avoid confusion or unnecessary cessation of activities, the administrative body amended the subsection to only require notification of applicable activities.
- (10) Subject Matter: Transfer of ownership, control, and certificate rights and obligations.
- (a) Comment: Tom Fitzgerald – The use of varying descriptors to identify the responsible party or parties is of great concern to KRC. At all times, there is at least one entity that is responsible for compliance with all of the terms and conditions of the construction certificate issued by the Board, and under the statute, that is the construction certificate holder. Under the statute, the “rights and

obligation under the certificate” which include more than just posting the bond and a decommissioning plan, cannot be transferred unless there has been an application to and a board determination, pursuant to KRS 278.710(3)(b). For reasons not clear, the General Assembly did not delegate the responsibility to approve transfers of rights and obligations under an issued construction certificate to the Energy and Environment Cabinet. Contrast KRS 278.710(3)(b), paragraphs (a), (c), and (d), also subsection (4), (5), and (7) through (10), all reference the Cabinet. The cabinet should use the terms of the statute to identify the various entities and to make sure that at all times there are parties responsible for the implementation of each construction certificate requirement, and for any other requirements imposed by the statute. The Cabinet must acknowledge and assure that under the regulations, even if the construction certificate holder (or owner or controller) transfers ownership or control of the merchant electric generating facility, the certificate holder that was the applicant to whom the certificate was issued remains “on the hook” for compliance with all Board conditions of approval unless and until another entity is approved by the Board as the construction certificate holder.

- (b) Response: KRS 278.710(3)(b) requires Board approval for transfer of rights and obligations under the certificate, in contrast to KRS 278.710(5) that allows the secretary of the Cabinet to accept transfers of decommissioning obligations and bonding requirements. The administrative body has amended this administrative regulation to address the concerns of clarity regarding terms used to identify responsible parties’ obligations under the construction certificate and statute. Pursuant to KRS 278.710(6) any application approval condition that requires approval of the transfer of control of a MEGF after construction is complete shall be void and unenforceable, but any transfer of control of a MEGF shall be subject to compliance with the requirements of subsections (3)(d), (4), and (5) of this section. Therefore, the Cabinet does not possess the authority to enforce approval conditions of the application.

(11) Subject Matter: DWM 4658 Form – Notifications Form.

- (a) Comment: Tom Fitzgerald – KRC believes that the use of a single notification form covering all notifications required by HB-4, will create more confusion than would be needed by simply providing that notification shall be provided of the occurrence of the various events, without attempting to create a form covering them all. If the agency insists on finalizing the regulation with a single form, the caption of the form should be changed since when a certificate holder is notifying the agency of permanent cessation of activity or of the beginning of decommissioning, it is neither “construction” or “operating,” but instead closing and decommissioning.
- (b) Response: The administrative body has changed the name of the form to address the concern of the commentor. The new form name is DWM 4658 “Merchant Electric Generating Facility (MEGF) Operation Notification Form”

- (12) Subject Matter: Forms incorporated by reference, DWM 4652, 4657, and 4658.
- (a) Comment: Tyler Shields – Typographical errors throughout forms, including use of terms not in statute, for example PSC rather than Board.
  - (b) Response: The administrative body has reviewed the forms incorporated by reference and amended to use terms in accordance with statute and this chapter. Form DWM 4656 also removed fee exemption for publicly owned facilities.

V. Summary of Statement of Consideration and Action Taken by Promulgating Administrative Body

The public hearing on this administrative regulation was cancelled; however, written comments were received. The Division of Waste Management responded to the comments and amends the administrative regulation as follows:

Page 1  
Section 1  
Lines 20-21

After “Notification Procedures.”, insert the following:

A  
Delete “an applicant or person who has received a”  
After “construction certificate”, insert the following:  
**holder of**  
Delete “for”

Page 2  
Section 1(2)  
Line 10

After “this section”, insert the following:  
**for applicable activities**

Page 2  
Section 2(1)  
Line 14

Delete “existing”  
After “applicant and”, insert the following:  
**construction certificate holder or person who controls or owns the right to control the MEGF**  
Delete “owner-operator”.

Page 3  
Section 2(3)(a)  
Line 3

Delete “the applicant and”  
After “the successor”, insert the following:  
**and construction certificate holder or person who controls or owns the right to control the MEGF**

Page 3

Section 2(5)(a)

Lines 9-10

After "5(a) The", insert the following:

**construction certificate holder**

Delete "owner-operator".

After "remain responsible", insert the following:

**for obligations**

After "pursuant to the", insert the following:

**construction certificate and**

Delete "both" and "owner-operators and successors".

Page 3

Section 2(5)(c)

Lines 16-17

After "are deficient," insert the following:

**pursuant to KRS 278.710(3), (4), and (7).**

After "shall send the", insert the following:

**applicant and construction certificate holder**

Delete "owner-operator and successor".

Page 3

Section 2(5)(c)2.

Line 19

After "2. The", insert the following:

**applicant and construction certificate holder**

Delete "owner-operator and successor".

Page 3

Section 2(5)(c)2.

Line 22

Insert the following:

**existing**

Delete "original"

Page 4

Section 2(5)(c)3.

Line 3

After "the", insert the following:

**applicant and construction certificate holder**

Delete "owner-operator and successor".

Page 4

Section 3(1)

Line 6

After "generation of electricity, the", insert the following:  
**construction certificate holder, or**  
Delete "owner-operator".

Page 4

Section 3(2)

Line 10

After "(2) Pursuant to", insert the following:  
**KRS 224.10-285(1)**  
Delete "401 KAR 30:020(2)"

Page 4

Section 4(2)

Line 16

After "will provide the", insert the following:  
**construction certificate holder or person who controls or owns the right to control the MEGF**  
Delete "applicant"

Page 4

Section 4(2)(a)

Lines 17-18

After "(a)", insert the following:  
**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.**  
Delete "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.

Page 4

Section 4(2)(b)

Line 19

After "(b) If the", insert the following:  
**construction certificate holder**  
Delete "owner-operator".  
Delete the table below.

"MEGF Generating Capacity	Annual Fee
≥10 MW up to and including 75 MW	\$4,000
>75 MW up to and including 150 MW	\$8,000
>150 MW	\$12,000"

Delete "(c)"

Page 5

Section 4(2)(c)



Line 2

After "KRS 224.99-010", insert the following:

**(16)**

Page 5

Section 4(3)

Lines 3-5

Delete "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."

Page 5

Section 4(4)(a)

Line 6

Delete "(4)"

After "(a) The", insert the following:

**construction certificate holder**

Delete "applicant, owner-operator".

Page 5

Section 5

Line 12

After "Reports. The", insert the following:

**construction certificate holder**

Delete "owner-operator".

Page 6

Section 5(2)

Line 3

After "certified by the", insert the following:

**construction certificate holder**

Delete "owner-operator".

Page 6

Section 5(3)

Line 6

After "(3) The", insert the following:

**construction certificate holder**

Delete "owner-operator".

Page 6

Section 5(4)

Line 12

After "(4) The", insert the following:

**construction certificate holder**

Delete "owner-operator".

Page 6

Section 5(4)

Line 15

After "KRS 224.1-400 and", insert the following:

**401 KAR**

Page 6

Section 5(5)

Lines 17-19

After "(5)", insert the following:

**Failure by a construction certificate holder**

Delete "an", "s" from persons, "owner-operator".

After "generating facility", insert the following:

<sup>3</sup>  
Delete "who fail"

After "KRS 224.99-010", insert the following:

**(16)**

Page 6

Section 6(1)(a)

Line 22

After "MEGF", insert the following:

**Operation**

Delete "Construction-Operating"

After "4658", insert the following:

**January 2024**

Delete "July 2023"

Page 6

Section 6(1)(b)

Line 23

After "4652", insert the following:

**January 2024**

Delete "July 2023"

Page 7

Section 6(1)(c)

Line 2

After "4657", insert the following:

**January 2024**

Delete "July 2023"

Page 7

Section 6(1)(d)

Line 3

After "4656", insert the following:

**January 2024**

Delete "July 2023"

Statement of Consideration  
Relating to 401 KAR 103:020

Energy and Environment Cabinet, Department for Environmental Protection, Division of Waste  
Management  
(Amended After Comments)

I. The public hearing on 401 KAR 103:020, scheduled to be held virtually on December 21, 2023 at 10:00 a.m. was cancelled; however, written comments were received during the public comment period.

II. The following people submitted written comments:

<u>Name and Title</u>	<u>Agency/Organization/Entity/Other</u>
Tom Fitzgerald	Kentucky Resource Council
Tyler Shields	Division of Waste Management
Amanda Stallings	National Grid Renewables Development, LLC
Stephanie Stumbo	NextEra Energy
Evan Vaughan	MAREC Action

III. The following people from the promulgating administrative body responded to the written comments:

<u>Name and Title</u>	<u>Agency/Organization/Entity/Other</u>
Tyler Shields, Environmental Control Supervisor	Division of Waste Management

IV. Summary of Comments and Responses

(1) Subject Matter: Decommissioning notification.

(a) Comment: Amanda Stallings – Reference to “notification ... of intent to start the decommissioning process” appears to be in error, since such notice does not otherwise appear in the proposed regulations or the related statutes; Section 1(3)(c) should perhaps should simply state: “define the conditions upon which decommissioning will be made...” If it is the Cabinet’s intent to establish a requirement of “notification of intent to start the decommissioning process,” this notification needs to be better defined; for example, is notification to the Cabinet, the affected landowner(s), or both?

- (b) Response: The intent is to ensure the MEGF defines the conditions upon which decommissioning will be initiated within the decommissioning plan. Additionally, the cabinet would like to ensure facilities provide notification in accordance with 401 KAR 103:010(1). The administrative body has amended the administrative regulation to include citation of 401 KAR 103:010(1).
- (2) Subject Matter: Time frame of decommissioning.
- (a) Comment: Amanda Stallings – Section 1(3)(d) would be clarified by adding *anticipated* or *estimated* before “timeframe,” since this is a component of decommissioning plan filed years or decades before decommissioning occurs and is subject to periodic updates.
- (b) Response: The administrative body has amended this paragraph to include *estimated* in an effort to clarify the intent of the requirement.
- (3) Subject Matter: Landowner accommodations.
- (a) Comment: Amanda Stallings – Section(1)(h) it should be clarified what is the plan requirement if a special accommodation is made to not remove equipment or facilities which parts (i) and (j) list as removed. In addition, as to subparts number 1-3: Subpart 1 should be omitted. The requirement to “incorporate the accommodations as requirements into the lease agreement with landowners and the decommissioning plan” is either superfluous to or inconsistent with the provision in KRS 278.706(2)(m). May also lead to conflict with Section 1(3)(j) or (h) and ignores that the statues specifically provides for accommodating landowner requests “at the end of the MEGF’s useful life ... that are in addition to the minimum requirements set for in this paragraph and in addition to any other requirements specified in the lease with the landowner.” KRS278.706(2)(m)6. Subparts 2 and 3 should be omitted or their specification of procedure when an owner-operator denies or grants an affected landowner’s request for special accommodation should be in their own subsection. IF procedures for landowner requests and their consideration and documentation are set out in the regulation, it should be clarified whether notice of such request and their outcome is to be given to the Cabinet and to any applicable county or municipal government.
- (b) Response: The administrative body has amended the regulation to address concerns regarding redundancies in the statute and regulation in relation to Section 1(3)(h) and KRS 278.706(2)(m)6.
- (4) Subject Matter: Section 4 of 401 KAR 103:020.
- (a) Comment: Amanda Stallings – The first sentence should give Cabinet discretion (“may”) to draw on the bond, rather than require it (“will”) in the case of abandonment or failure to complete decommissioning obligations. The relationship between the first and second sentences should be clarified. What happens if more than one party successfully makes a claim on the bond? The proposed regulation also refers both to “decommissioning bond” and “approved financial assurance”; if no distinction is intended, the same term should be used.
- (b) Response: The administrative body amended the regulation to be in accordance with KRS 224.10-285. In the case where more than one party makes a successful claim on

the bond, they will be held liable for the decommissioning obligations in relation to their portion of financial assurance awarded. Additionally, the term “decommissioning bond” was removed from the regulation and amended to refer to approved financial assurance.

- (5) Subject Matter: Owner-operator, person who controls or owns right to control, construction certificate holder clarification.
- (a) Comment: Tom Fitzgerald – As noted in the discussion of 103:010, the construction certificate holder is at all times responsible for all rights and obligations under the construction certificate. Additionally, ownership, control, or right to control the MEGF has been transferred from the construction certificate holder, that new entity in addition to the construction certificate holder, becomes liable for completion of the decommissioning plan and posting of the bond. The term “owner-operator” is not used in the discussion of responsibility for the certificate compliance nor for the decommissioning plan and bonds but instead used to only refer to who bears responsibility in KRS 278.710(10) for removal of replaced and discarded solar panels. The term should not be used when referring to responsibilities for decommissioning plan and bond, and for certificate compliance, matters.
- (b) Response: The administrative body has amended the administrative regulation to use terms identified in the statute when referring to responsible parties. Additionally, the administrative regulation was amended to ensure at least one party is always responsible for rights and obligations under the construction certificate beyond decommissioning and bond requirements. The term “owner-operator” was removed from the regulation to provide clarity of responsibility in accordance with statutes.
- (6) Subject Matter: Concerns of ambiguity regarding “minimal requirements” of decommissioning plan.
- (a) Comment: Tom Fitzgerald – Section 1(3) uses the term “minimally” as a modifier for what is required. The term should be removed since it introduces unnecessary ambiguity. If the Cabinet intends that all of the requirements listed be met, it should provide that the plan shall provide that. Additionally, the regulation listing of decommissioning plan requirements should fully incorporate the requirements for decommissioning established in the statute and assure that any additional mitigation measures imposed by the Board in connection with issuance of the construction certificate are also complied with.
- (b) Response: The administrative body has amended the administrative regulation to remove the term “minimally” with intent to remove unnecessary ambiguity. 401 KAR 103:020(1) addresses the commentor’s concerns of mitigation measures outlined in KRS 278.704 through KRS 278.710. It should be noted that, any application condition that requires approval of transfer of control of a MEGF after construction is complete, shall be void and unenforceable in accordance with KRS 278.710(6).
- (7) Subject Matter: Typographical errors.
- (a) Comment: Tom Fitzgerald – The proposed regulations need to be carefully reviewed for typographical errors. The proposed regulation suffers from the same problems in the necessity, function, and conformity section as identified in other regulations.

- (b) Response: The proposed regulations were extensively reviewed for typographical errors, addressing concerns and those caught by the Legislative Research Commission's submission of suggested substitutes.
- (8) Subject Matter: List of invasive species.
- (a) Comment: Evan Vaughan – Page 2, line 15, the requirements for native seed mixes and avoidance of invasive species is vague. The commenter requests that the Energy and Environment Cabinet provide or reference a specific list of prohibited “invasive species” to aid companies in compliance with this requirement.
- (b) Response: This is common practice when addressing vegetation screening. The Cabinet provides a [list of invasive species](#) on the Energy and Environment Cabinet website but will not amend the regulation to include a list that is subject to change in regulation.
- (9) Subject Matter: MEGF Annual Report or Decommissioning Plan Update Form.
- (a) Comment: Evan Vaughan – It is unclear if the decommissioning plan and the decommissioning cost estimate are intended to be a part of the annual report or if they should be submitted alongside the annual report at least once every five (5) years. The commentator recommends updates to the decommissioning plan and decommissioning cost estimate only be required once every five (5) years. Furthermore, they recommend the “MEGF Annual Report” be reduced to an every five (5) year reporting requirement. Year-to-year operations and maintenance activities on a solar project are low impact and low risk, primarily consisting of vegetative maintenance. The commentator encourages that Cabinet to seek other opportunities to reduce regulatory burden and lower proposed administrative fees through more reasonable reporting intervals for monitoring solar projects which are largely passive. Lower fees will contribute to lower overall cost of electricity and greater benefits to landowners/local communities.
- (b) Response: The MEGF Annual Report or Decommissioning Plan Update Form are not to be submitted in conjunction with each other annually. The statute implements that decommissioning plan and decommissioning cost estimate updates are only required to be updated at least once every five (5) years. However, the annual reporting requirement is a mechanism to assist the cabinet with monitoring and enforcement responsibilities pursuant to KRS 278.710(7), while lowering the MEGF annual fee and potentially lowering cabinet's costs associated with monitoring and enforcement obligations under KRS 278.710. KRS 278.710(10) requires that removed or discarded solar panels be removed from the site within 90 days of completion of work. While these facilities may be seen as largely passive, if statute requires the removal of discarded panels from site, the cabinet could be potentially be required to inspect the facilities once every 90 days to ensure compliance.
- (10) Subject Matter: Form incorporated by reference, DWM 4657.
- (a) Comment: Tyler Shields – Typographical errors throughout forms, including use of terms not in statute, for example PSC rather than Board.
- (b) Response: The administrative body has reviewed the forms incorporated by reference and amended to use terms in accordance with statute and this chapter.

V. Summary of Statement of Consideration and Action Taken by Promulgating Administrative Body

The public hearing on this administrative regulation was cancelled; however, written comments were received. The Division of Waste Management responded to the comments and amends the administrative regulation as follows:

Page 1

Section 1

Line 19

After "Decommissioning Plan. The", insert the following:

**construction certificate holder**

Delete "owner-operator"

Page 2

Section 1

Line 1

After "outlined in KRS", insert the following:

**278.706 and**

Delete "278.704 through"

Page 2

Section 1(3)

Line 7

Delete "minimally"

Page 2

Section 1(3)(c)

Lines 12-13

After "decommissioning will be", insert the following:

**implemented**

Delete "initiated"

After "will be made", insert the following:

**to the Cabinet, affected landowners, and local county or municipality in regard to implementation**

Delete "intent to start"

After "decommissioning process", insert the following:

**, pursuant to 401 KAR 103:010(1)**

Page 2

Section 1(3)(d)

Line 14

After "(d) The", insert the following:

**estimated**



Page 2

Section 1(3)(h)

Lines 20-6 of Page 3

After “any affected landowner”, insert the following:

**, pursuant to KRS 278.706(2)(m)6**

Delete “1. Incorporate the accommodations as requirements into the lease agreement with landowners and the decommissioning plan; or

2. Deny the request to accommodate and submit a detailed correspondence to the landowner, county or municipal government, and cabinet.

3. The owner-operator or person who controls or owns the right to control shall provide the landowner, county or municipal government, and cabinet with a timeline of any agreed upon accommodated request from the landowner or county or municipal government in accordance with paragraph (h) of this subsection.”

Page 3

Section 1(3)(j)

Line 21

After “was installed”, insert the following:

**, unless otherwise requested by the landowner; and**

Page 3

Section 1(3)

Line 22

After “the landowner; and”, insert the following:

**(k) Incorporate the requirements of paragraphs (a) through (j) into the applicant’s or construction certificate holder’s leases with landowners.**

Page 4

Section (2)(5)

Lines 21-22

After “the cabinet, the”, insert the following:

**construction certificate holder**

Delete “owner-operator”

Page 5

Section 3(1)

Line 4

After “(1) The”, insert the following:

**construction certificate holder**

Delete “applicants, owner-operators”

Page 5

Section 4

Line 21

After “KRS 224.10-100, the cabinet”, insert the following:

**may**

Delete “will”

After “draw upon the”, insert the following:

**financial assurance**

Delete “decommissioning bond”

Page 6

Section 5(1)

Line 3

After “4657”, insert the following:

**January 2024**

Delete “July 2023”

Statement of Consideration  
Relating to 401 KAR 103:030

Energy and Environment Cabinet, Department for Environmental Protection, Division of Waste Management  
(Amended After Comments)

I. The public hearing on 401 KAR 103:030, scheduled to be held virtually on December 21, 2023, at 10:00 a.m. was cancelled; however, written comments were received during the public comment period.

II. The following people submitted written comments:

<u>Name and Title</u>	<u>Agency/Organization/Entity/Other</u>
Tom Fitzgerald	Kentucky Resource Council
Tyler Shields	Division of Waste Management
Amanda Stallings	National Grid Renewables Development, LLC
Stephanie Stumbo	NextEra Energy
Evan Vaughan	MAREC Action

III. The following people from the promulgating administrative body responded to the written comments:

<u>Name and Title</u>	<u>Agency/Organization/Entity/Other</u>
Tyler Shields, Environmental Control Supervisor	Division of Waste Management

IV. Summary of Comments and Responses

- (1) Subject Matter: Typographical errors in necessity, function, and conformity section.
- (a) Comment: Tom Fitzgerald – The proposed regulations need to be carefully reviewed for typographical errors. The proposed regulation suffers from the same problems in the necessity, function, and conformity section as identified in other regulations.
- (b) Response: The proposed regulations were extensively reviewed for typographical errors, addressing concerns and those caught by the Legislative Research Commission's submission of suggested substitutes.

(2) Subject Matter: Financial assurance obligations.

- (a) Comment: Tom Fitzgerald - The regulation needs to be revised so that the requirements for financial assurance are imposed on the parties as described and identified by the statute. The obligations of an applicant for a construction certificate with respect to financial assurance are established in KRS 278.706(2)(m)5. The decommissioning plan cannot be approved by the Board unless the plan includes within it a plan to secure a bond meeting all of the requirements established in that subsection, and KRS 278.710(3) requires that the person receiving the construction certificate (which is referred to later in the statute as the construction certificate holder) file a copy of that bond before construction commences. If ownership or control is transferred to another entity, that entity additionally becomes responsible for the adequacy of the financial assurance but the certificate holder remains responsible as well since the bond requirement is part of the approved decommissioning plan and the construction certificate holder who receives the certificate remains responsible under KRS 278.710(3)(a), regardless of whether ownership or control of the facility has been transferred to another party, unless that party has also succeeded to the construction certificate by application and approval by the Board.
- (b) Response: According to KRS 278.710(5) any person who transfers or sells ownership, control, or the right to control a merchant electric generating facility (MEGF) shall remain liable for all existing decommissioning obligations and bond requirements until the person who acquires ownership control, or the right to control the MEGF files with the Energy and Environment Cabinet the documents required by KRS 278.710(4) and they are accepted as complete by the secretary of the Cabinet. KRS 278.710(4) requires that a person who has acquired ownership, control, or the right to control a MEGF from the applicant or successor or assign shall file with the Cabinet within ten (10) days of completing the acquisition: a written consent to assume obligation set forth in the decommissioning plan as of the date the acquisition occurred; and a notice of adoption of an existing bond or other similar security previously filed pursuant to KRS 278.710(3)(a) or a replacement bond or other similar security that complies with KRS 278.706(2)(m)5. Upon the required documents under KRS 278.710(4) being accepted as complete by the secretary, the transfer of decommissioning and financial obligations is complete, and the applicant or successor is no longer liable for those obligations. However, pursuant to KRS 278.710(3)(b), the applicant or successor (the construction certificate holder) is still liable for rights and obligations under the certificate unless they have received approval from the board to transfer the construction certificate and the rights and obligations associated. The administrative body has amended this administrative regulation to correct terms for which party is reliable in relation to financial obligations, ensuring that at least one party is responsible for bonding requirements at all times and there is no lapse in coverage.

- (3) Subject Matter: Clarification of terms related to parties with financial obligations/responsibilities.
- (a) Comment: Amanda Stallings - "Applicant(s), owner(s)-operator(s), or person(s) who controls or owns the right to control": NG Renewables suggests that the term owner-operator is intended and be used instead of this unwieldy and ambiguous phrasing. Difficulties of understanding the meaning of this mixture of three categories in the proposed regulation is further complicated because they vary between singular or a mix of plural and singular.
  - (b) Response: The administrative body has amended this administrative regulation to provide clarity of which party is responsible for financial obligations during each phase of operation. Additionally, the term owner-operator and replaced with appropriate terms identified in statute to provide consistency across the regulation and 401 KAR Chapter 103.
- (4) Subject Matter: Financial assurance mechanism, decommissioning bond terminology.
- (a) Comments: Amanda Stallings - This proposed regulation never uses the defined term decommission(ing) bond. It generally uses financial assurance mechanism, but sometimes drops a word from that term, for example, referring to "financial mechanism" or "financial assurance." Reference to the general category should be consistent within and across each of the proposed regulations in chapter 103. These comments about proposed 401 KAR 103:030 use financial assurance mechanism or mechanism and assume that the current variations are typos and not intended to refer to different types of mechanisms.
  - (b) Response: The administrative body has amended this administrative regulation to provide clarity to the term financial assurance mechanism. The term decommissioning bond was removed and replaced with financial assurance or financial assurance mechanism to provide consistency across the regulation and 401 KAR Chapter 103.
- (5) Subject Matter: Criteria of financial assurance and mechanism sections.
- (a) Comment: Amanda Stallings – These sections include criteria for the financial assurance mechanisms but contain provisions that are ambiguous or inconsistent internally or with other provisions. NG Renewables suggests that the efficiency and clarity of these sections could be improved by judicious adaptation of similar provisions in the "Financial requirements and bonds" regulation for waste disposal, 401 KAR 48:310. Differences in the governing statutes, industries, and other context must be reflected in the phrasing adapted for MEGF regulations; regulations for closure and closure care of landfills may not be applicable to MEGFs nor sufficiently address what is necessary for MEGF financial assurance mechanisms or procedures.
  - (b) Response: The administrative body amended this administrative regulation to address concerns of language used for cancellation or lapse in financial coverage, citing appropriate statutory requirements for MEGFs. Additionally, this administrative regulation was amended to provide clarity of procedures for cancellation or lapse in financial coverage.

- (6) Subject Matter: Clarification of financial criteria and mechanisms.
- (a) Comment: Amanda Stallings – The lead-in for this subsection indicates that this is about requirements on the MEGF owner-operator and that the lettered parts are criteria to be satisfied by the required financial assurance mechanism(s). Only part (a) is mechanism criterion, whereas (b) through (d) relate to Cabinet review activities. Cross-reference in parts (b) and (d) should be checked and updated. As worded, this would impose unnecessary work on the Cabinet if the notice of “impending cancellation or lapse” was due. It is unclear how the requirements in Section 2(3) are to be “[p]ursuant to Section 3 of this administrative regulation,” or whether that phrasing should be omitted as superfluous. Furthermore, it appears that Sections 2(2) and 2(3) are to apply to all financial assurance mechanisms covering decommissioning, not just those which are updated or replacements for an initial mechanism or those offered by a successor and thus the initial reference to Section 3, may be unduly limiting. Finally, the non-parallel wording of subparts (3)(b)(1) and (2) creates ambiguity and the possibility of situations in which approval of a submitted mechanism is to be both granted and denied or neither granted nor denied or in which no guidance as to approval or denial is given. Consistent with the general lead-in, and contrasting with subsection (1), subsection (5) refers to the owner-operator rather than a proposed successor. The language should be clarified whether Section 3 is intended to govern only updated or replacement mechanisms obtained by successors or to financial assurance mechanisms generally.
- (b) Response: The administrative body has amended this administrative regulation to provide clarity of mechanism criteria, appropriate cross referencing, and address cabinet procedures for reviewing financial assurance mechanisms.
- (7) Subject Matter: Forms incorporated by reference, DWM 4651, 4653, and 4654.
- (a) Comment: Tyler Shields – Typographical errors throughout forms, including use of terms not in statute, for example PSC rather than Board.
- (b) Response: The administrative body has reviewed the forms incorporated by reference and amended to use terms in accordance with statute and this chapter.

V. Summary of Statement of Consideration and Action Taken by Promulgating Administrative Body

The public hearing on this administrative regulation was cancelled; however, written comments were received. The Division of Waste Management responded to the comments and amends the administrative regulation as follows:

Page 2  
Section 1  
Line 2

After “applicants,” insert the following:  
**construction certificate holder**  
Delete “owner-operators”.

Page 2

Section 2(1)

Line 5

After "Applicants," insert the following:

**construction certificate holder**

Delete "owner-operators".

Page 2

Section 2(1)(b)

Lines 9-10

Delete "Ensure the financial assurance mechanisms be available no later than thirty (30) days after the issuance of a cabinet demand letter."

Page 2

Section 2(1)(c)

Lines 11-14

Delete "Complete and notarize a revised financial assurance mechanism form, in accordance with Section 3 of this administrative regulation, for the revised financial assurance mechanism; (d)"

Page 2

Section 2(1)(d)

Line 15

Delete "." following KRS 278.710(4)

After "KRS 278.710(4)", insert the following:

**; and**

Page 2

Section 2(1)(e)

Line 16

Delete "(e)".

Page 2

Section 2(2)

Line 17

After "The applicant," insert the following:

**construction certificate holder**

Delete "owner-operator".

Page 2

Section 2(2)(a)

Line 22

Delete "(a)".

Page 3

Section 2(2)(b)-(d)

Lines 1-9

Delete "(b) Upon receiving notice from the surety of the impending cancellation or lapse of the financial assurance mechanism, the cabinet shall seek agreement of any landowners who have not previously agreed pursuant so paragraph (c) below to make a demand on the financial assurance mechanism.

(c) The cabinet may seek agreement of the landowners to allow it to make a demand on the bond prior to receiving notice of impending cancelation or lapse.

(d) A landowner's agreement to allow the cabinet to make a demand on a bond pursuant to clause a. of this subparagraph may only be revoked in writing bearing a notarized signature of the landowner."

Page 3

Section 2(3)

Lines 10-19

Delete "Pursuant to Section 3 of this administrative regulation, financial assurance mechanism shall be:(a) Submitted; (b) Reviewed; and

1. Approved by the cabinet if the applicant, owner-operator, or person who controls or owns the right to control a merchant electric generating facility is in compliance with the requirements of this administrative regulation; or

2. Denied by the cabinet if the updated or replacing financial assurance mechanism does not meet the requirements stated KRS 278.706, KRS 278.710, and this administrative regulation. (4)"

After "(3)", insert the following:

**Any**

After "Applicant,", insert the following:

**construction certificate holder**

Delete "owner-operators".

Page 4

Section 3(1)

Line 5

After "(1)", insert the following:

**A financial assurance mechanism shall be:**

**(a) Submitted;**

**(b) Reviewed; and**

**1. Approved by the cabinet if the applicant, construction certificate holder, or person who controls or owns the right to control a merchant electric generating facility is in compliance with the requirements of KRS 278.706 and 278.710 and this administrative regulation; or**

**2. Denied by the cabinet if the financial assurance mechanism does not meet the requirements established in KRS 278.706 and 278.710 and this administrative regulation.**



Page 4

Section 3(1)

Lines 5-6

After “(2) Before the cabinet approves”, insert the following:

a

Delete “an updated or replacement”.

After “mechanism, the”, insert the following:

**applicant or construction certificate holder**

Delete “successor”.

Page 4

Section 3(1)(a)

Lines 7-8

After “Complete and”, insert the following:

**submit a notarized MEGF**

Delete “notarize a”.

After “Performance Agreement”, insert the following:

**, form DWM 4651**

Delete “of decommissioning pursuant to paragraph (c) of this section”.

After “;”, insert the following:

**and**

Page 4

Section 3(1)(b)

Lines 9-10

After “278.706”, insert the following:

**(2)(m)5**

Page 4

Section 3(1)(b)1.

Line 11

After “in subsection (“, insert the following:

**3**

Delete “2”.

Page 4

Section 3(1)(b)2.

After “in subsection (“, insert the following:

**4**

Delete “3”.

Page 4

Section 3(1)(c)

Lines 14-16

Delete "(c) A performance agreement, guaranteeing performance of decommissioning to allowable limits, shall be completed, and notarized on MEGF Performance Agreement Form, DWM 4651."

Page 4

Section 3(2)

Line 17

After "((", insert the following:

3

Delete "2".

Page 4

Section 3(3)

Line 21

After "((", insert the following:

4

Delete "3".

Page 5

Section 3(4)

Line 6

After "((", insert the following:

5

Delete "4".

Page 5

Section 3(5)

Line 7

After "((", insert the following:

6

Delete "5".

After "The applicant,", insert the following:

**construction certificate holder**

Delete "owner-operator".

Page 5

Section 3(5)(c)

Line 12

After "to subsection ("", insert the following:

5

Delete "4".

Page 5  
Section 3  
Line 15

After "KRS 278.706.", insert the following:

**(7) If the cabinet receives notice from the financial guarantor of the impending cancellation or lapse of the financial assurance mechanism, the cabinet may seek agreement of any landowners who have not previously agreed pursuant to subsection (8) of this section, to make a demand on the financial assurance mechanism. A landowner's agreement to allow the cabinet to make a demand on a financial assurance mechanism shall only be revoked with a notarized signature of the landowner.**

**(8) Pursuant to KRS 224.10-100(31), the cabinet may seek an agreement with the landowner to allow the cabinet to make a demand on the financial assurance mechanism prior to receiving notice of impending cancellation. If the cabinet makes a demand on the financial assurance mechanism, the construction certificate holder or person who controls or owns the right to control the facility shall ensure the financial assurance mechanism be available no later than thirty (30) days after issuance of the demand letter.**

Page 5  
Section 4(1)  
Line 18

After "released by the cabinet", insert the following:

**if**

Delete "when".

After "the", insert the following:

**construction certificate holder**

Delete "owner-operator".

Page 5  
Section 4(2)  
Line 23

After "been satisfied, the", insert the following:

**construction certificate holder**

Delete "owner-operator".

Page 6  
Section 5(1)(a)  
Line 5

After "4651", insert the following:

**January 2024**

Delete "July 2023"

Page 6  
Section 5(1)(b)  
Line 6

After "4653", insert the following:

**January 2024**

Delete "July 2023"

Page 6

Section 5(1)(c)

Line 7

After "4654", insert the following:

**January 2024**

Delete "July 2023"