



1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Water

4 (Amendment)

5 401 KAR 4:070. Coal combustion residuals surface impoundments.

6 RELATES TO: KRS 146.200-146.990, 151.110, 151.125, 151.250, 224.1, 224.10, 224.50,
7 224.99, 40 C.F.R. 257.73, 257.74, 257.82, 257.83, 16 U.S.C. 661, 1273, 1531, 33 U.S.C. 1261 -
8 1387

9 STATUTORY AUTHORITY: KRS 224.10-100, 224.70-100, 224.70-110

10 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the cabinet
11 to promulgate administrative regulations not inconsistent with the provisions of law administered by
12 the cabinet. KRS 224.10-100 and 224.70-100 authorize the cabinet to develop and conduct a
13 comprehensive program for the management of water resources and to provide the prevention,
14 abatement, and control of water pollution. This administrative regulation establishes the standards
15 for coal combustion residuals (CCR) surface impoundments [~~pertaining to the permit by rule~~]
16 established in 401 KAR Chapter 46.

17 Section 1. Definitions. The definitions shall be as defined in 401 KAR 46:101[~~Definition:~~
18 ~~"Coal combustion residuals surface impoundment" or "CCR surface impoundment" means a natural~~
19 ~~topographic depression, man-made excavation, or diked area, which is designed to hold an~~
20 ~~accumulation of CCR and liquids, and the unit treats, stores, or disposes of CCR].~~

1 Section 2. The structural integrity criteria requirements for an owner or operator of an
2 existing CCR surface impoundment shall be as established in 40 C.F.R. 257.73.

3 Section 3. The structural integrity criteria requirements for an owner or operator of a new
4 CCR surface impoundment and any lateral expansion of a CCR surface impoundment shall be as
5 established in 40 C.F.R. 257.74.

6 Section 4. The hydrologic and hydraulic capacity requirements for owners or operators of
7 CCR surface impoundments shall be as established in 40 C.F.R. 257.82.

8 Section 5. The inspection requirements for owners or operators of CCR surface
9 impoundments shall be as established in 40 C.F.R. 257.83.

10 Section 6. (1)[~~Except for 40 C.F.R. 257.107, including cross references to 40 C.F.R.~~
11 ~~257.107 within 40 C.F.R. 257.73, 257.74, 257.82, and 257.83,~~] The recordkeeping, publicly
12 accessible internet site,[~~record keeping~~] and notification requirements for an owner or operator of a
13 CCR surface impoundment shall be as established in 401 KAR 46:110, Section 11[~~40 C.F.R.~~
14 ~~257.105 and 257.106~~].

401 KAR 4:070 Coal combustion residual surface impoundments is approved for filing.

10/14/20
Date

Carol R. Hulse, P.G. Per
John Lyons, Secretary
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on December 22, 2026, at 10:00 a.m. EST (9:00 a.m. CST), at 300 Sower Blvd., 1st Floor, Training Room B. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2026. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

Contact Person: Louanna Aldridge
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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

401 KAR 4:070

Contact Person: Louanna Aldridge
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(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for coal combustion residuals (CCR) surface impoundments established in 401 KAR Chapter 46.

(b) The necessity of this administrative regulation: KRS 224.10-100 and 224.70-100 authorize the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide the prevention, abatement, and control of water pollution. This administrative regulation provides specific design and permit application criteria for CCR surface impoundments to protect waters of the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.70-100 authorizes the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide the prevention, abatement, and control of water pollution. This administrative regulation establishes the standards for CCR surface impoundments established in 401 KAR Chapter 46.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by providing specific design and permit application criteria for CCR surface impoundments to protect waters of the Commonwealth as required by the authorizing statutes.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment clarifies definitions as established in 401 KAR 46:101 to be consistent with federal regulations and adopts federal internet reporting requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide clarification for terms utilized for CCR surface impoundments and adopt federal internet reporting requirements to remain consistent with federal law.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by providing specific design and permit application criteria for CCR surface impoundments to protect waters of the Commonwealth.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by providing specific design and permit application criteria for CCR surface impoundments to protect waters of the Commonwealth as required by the authorizing statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Six (6) utility companies and any new owner/operator of a CCR unit, Division of Waste Management, Division of Water, Division of Enforcement, Kentucky Transportation Cabinet, and potentially all Kentucky counties and ratepayers of the Commonwealth.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation will require regulated entities to submit internet reporting requirements to the cabinet.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not result in additional costs because it references federal regulatory requirements that are already in effect.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will benefit the regulated entities by being consistent with the federal regulations, thereby only having one standard with which they must comply.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The administrative body has personnel costs associated with the review and approval of documents and inspections conducted. The cost of implementation of the CCR program, including this administrative regulation, is estimated to be \$420,800.

(b) On a continuing basis: The cost of implementation of the CCR program, including this administrative regulation, is estimated to be \$420,800 on an annual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding needed for the CCR program will be sourced from the CCR facility annual fee established in 401 KAR 46:120, in addition to a one-time federal grant of \$136,000.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation has an indirect fee structure established in 401 KAR 46:120.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation has an indirect fee structure established in 401 KAR 46:120.

(9) TIERING: Is tiering applied? (Explain why or why not)

Tiering is not applied in this administrative regulation as it establishes standards for CCR facilities in compliance with federal standards.

FEDERAL MANDATE ANALYSIS COMPARISON

401 KAR 4:070

Contact Person: Louanna Aldridge
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1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 257.53, 257.73, 257.74, 257.82, 257.83.
2. State compliance standards. KRS 224.10-100, 224.70-100, 224.50-760, and 224.70-110.
3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. 257.73, 257.74, 257.82, and 257.83.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment to this administrative regulation will not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendment to this administrative regulation will not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

FISCAL IMPACT STATEMENT

401 KAR 4:070

Contact Person: Louanna Aldridge
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(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 224.10-100, 224.50-760, 224.70-100, 224.70-110

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Energy and Environment Cabinet, Department for Environmental Protection, Division of Waste Management and Division of Water.

(a) Estimate the following for the first year:

Expenditures: The administrative body has personnel costs associated with the review and approval of documents and inspections conducted. The cost of implementation of the CCR program, including this administrative regulation, is estimated to be \$420,800.

Revenues: The indirect annual fee established in 401 KAR 46:120 is estimated to generate \$420,000 in revenue for the CCR program.

Cost Savings: There are no known cost savings for the promulgating agency in this administrative regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

The effective administration of the CCR program is estimated to cost \$420,800 annually. As CCR surface impoundment facilities move all units into post closure, the annual fee decreases as established in 401 KAR 46:120.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):

All Kentucky counties where CCR landfills or surface impoundments may be sited, or where beneficial reuse of CCR may be utilized.

(a) Estimate the following for the first year:

Expenditures: There are no known expenditures for local entities in this administrative regulation.

Revenues: There are no known revenues for local entities in this administrative regulation.

Cost Savings: There are no known cost savings for local entities in this administrative regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There are no known expenditures, revenues, or cost savings for local entities in this administrative regulation.

(4) Identify additional regulated entities not listed in questions (2) or (3):

Utility Companies: Six (6)

(a) Estimate the following for the first year:

Expenditures: There are no known expenditures for additional regulated entities in this administrative regulation. The annual fee for a CCR facility is \$30,000, unless all CCR units are in post-closure in which case the annual fee is decreased to \$5,000 as established in 401 KAR 46:120.

Revenues: There are no known revenues for additional regulated entities in this administrative regulation.

Cost Savings: There are no known cost savings for additional regulated entities in this administrative regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There are no known expenditures, revenues, or cost savings for additional regulated entities in this administrative regulation.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The CCR program, including this administrative regulation will cost approximately \$420,800 each year to effectively administer.

(b) Methodology and resources used to determine the fiscal impact: The Division of Waste Management estimates the program to require 3.3 full-time equivalent (FTE) positions in order to effectively administer the program estimated to cost \$420,800.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) There is no major economic impact from this administrative regulation.

(b) The methodology and resources used to reach this conclusion: The amendments to this administrative regulation will not have a major economic impact as the estimated costs associated with the CCR program are less than \$500,000 and funded by CCR annual fees. A total of 14 CCR facilities paying \$30,000 annually totals \$420,000.