



1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (Amendment)

5 401 KAR 46:120. Coal combustion residuals (CCR) permit program.

6 RELATES TO: KRS 224.1, 224.10, 224.50, 224.70, 224.99, Chapter 322, Chapter 322A, 16
7 U.S.C. 1531, 33 U.S.C. 1251, 42 U.S.C. 82, 40 C.F.R. 257.50-257.106

8 STATUTORY AUTHORITY: KRS 224.10-100, 224.50-760

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) authorizes the
10 cabinet to promulgate administrative regulations not inconsistent with the provisions of law
11 administered by the cabinet. KRS 224.50-760(1)(d) authorizes the cabinet to promulgate
12 administrative regulations for the management of special wastes. This administrative regulation
13 establishes the applicability and requirements for a CCR formal permit~~[permit-by-rule]~~ and CCR
14 registered permit-by-rule.

15 Section 1. Applicability. This administrative regulation shall apply to:

16 (1) An applicant for a CCR formal permit for a new CCR unit;

17 (2) An applicant for a modification to an existing CCR formal permit or CCR registered
18 permit-by-rule;

19 (3) An applicant for a CCR Corrective Action and Closure Permit;

20 (4) The beneficial use of CCR; and

21 (5) The owner or operator of a CCR unit.

1 Section 2. Types of CCR Permits. Any person engaged in the operation of a CCR unit
2 shall comply with this administrative regulation.

3 (1)(a) A CCR registered permit-by-rule shall be required for the beneficial use of
4 unencapsulated CCR off-site use. A beneficial use of CCR user~~[An owner or operator of a CCR~~
5 ~~unit]~~ shall complete and submit a~~[the following to obtain a registered permit by rule:~~

6 1.] Registered Permit-by-Rule for CCR Facility, DEP 46 120 4~~[DWM 4600; and~~

7 2. ~~In accordance with Section 7 of this administrative regulation, established financial~~
8 ~~assurance and proof of publication of a public notice].~~

9 (b) Within thirty (30) days of the receipt, as evidenced by the date stamped by the
10 Division of Waste Management, the cabinet shall review the registration information submitted
11 in accordance with paragraph (a) of this subsection.

12 (c) After review of the registration information submitted in accordance with paragraph
13 (a) of this subsection, the cabinet shall notify the applicant in writing:

14 1. The applicant completed and submitted all registration information and is deemed to
15 have a CCR registered permit-by-rule; or

16 2. The registration information is deficient, and require the owner or operator to submit
17 the required information to the cabinet.

18 (d)1. The owner or operator of a CCR registered permit-by-rule shall submit revised
19 registration information pursuant to paragraph (a) of this subsection if any information changes.

20 2. Within thirty (30) days of receipt, the cabinet shall review the revised registration
21 information in accordance with paragraphs (b) and (c) of this subsection.

22 (2) A beneficial use of CCR user shall be deemed to have a CCR permit-by-rule without
23 having made application with the cabinet, if:

1 (a)1. The user is beneficially re-using CCR on-site at the facility; or

2 2. The user is beneficially re-using encapsulated CCR off-site;

3 (b) The user is not in violation of 401 KAR Chapter 46 or 401 KAR 30:031;

4 (c)~~(b)~~ The beneficial use of CCR does not present a threat or potential threat to human
5 health or the environment;

6 (d)~~(e)~~ The beneficial use of CCR does not result in a nuisance condition created by the
7 fugitive emissions of CCR;

8 (e)~~(d)~~ The user characterized the nonhazardous nature of the CCR in accordance with
9 401 KAR 39:060~~[31:030]~~; and

10 (f)~~(e)~~ The user submits an annual report to the cabinet pursuant to Section 5 of this
11 administrative regulation.

12 (3) A CCR formal permit shall be required for all new CCR units. The formal permitting
13 process shall include the submittal of a complete application, review of the application, and
14 permit issuance or denial by the cabinet.

15 (a)1. All applicants for a new CCR formal permit shall submit a complete application,
16 “CCR Formal Permit Application”, DEP 46_120_3, that contains all of the information required
17 by this administrative regulation. Engineering drawings, specifications, and studies shall be
18 certified by a professional engineer registered in Kentucky.

19 2. The contents of the application shall be accurate and complete before the cabinet
20 makes a preliminary determination as established in 401 KAR 45:050, Section 4, to issue a CCR
21 formal permit.

22 3. Approvals obtained from the Division of Water in accordance with 401 KAR 4:070
23 shall be included as an attachment to the CCR formal permit application.

1 (b) The application process to obtain a CCR formal permit shall consist of two (2) phases.

2 1. Upon approval of a permit application, the cabinet shall issue a construction permit
3 that authorizes the owner or operator to commence construction of a site or facility in accordance
4 with the terms and conditions of the construction permit.

5 2. A construction and operation permit shall be issued by the cabinet if:

6 a. The applicant has notified the cabinet, in writing, that the liner system, if required, has
7 been constructed;

8 b. A representative of the cabinet has inspected the site and verified in writing to the
9 applicant, within thirty (30) days of the inspection, that the site has been developed in
10 accordance with plans approved by the cabinet; and

11 c. The applicant has submitted a certification by an engineer registered in Kentucky that
12 the liner system, if required, and other features have been constructed in accordance with the
13 approved plans and specifications.

14 (c)1. In addition to conditions required for all permits established in this administrative
15 regulation, the cabinet shall establish conditions on a case-by-case basis in permits to ensure
16 compliance with the requirements of 401 KAR Chapter 46.

17 2. The cabinet may incorporate applicable requirements directly into the permit. Each
18 CCR formal permit issued by the cabinet shall contain conditions as the cabinet determines
19 necessary to assist in compliance with the approved application and 401 KAR Chapter 46.

20 (d) Permits shall be issued in a manner and shall contain conditions consistent with
21 requirements of applicable state and federal laws. These laws include:

22 1. KRS 146.200 through 146.360 and 400 KAR Chapter 4 (the Wild Rivers system);

23 2. KRS 146.410 through 146.990 and 400 Chapters 2 and 3; and

1 3. 401 KAR 4:070.

2 (4) A CCR Formal Permit or CCR Registered Permit-by-Rule may be modified during its
3 term. Modification shall be conducted in accordance with this subsection.

4 (a) If a permit is modified, only the conditions that relate to the modification shall be
5 reopened. A permit modification shall comply with public notification requirements in
6 accordance with Section 8.

7 (b) An application to modify a permit for a lateral expansion shall require a public notice
8 in accordance with Section 8.

9 (c) A permit modification shall require the permittee to submit a complete application,
10 “Modification of a CCR Formal Permit”, DEP 46 120 5.

11 (d) Causes for modification of CCR Formal Permits shall include:

12 1. Material and substantial alterations or additions to the permitted CCR unit being
13 contemplated that justify new permit conditions that are different or absent in the existing permit,
14 including:

15 a. Modification of a closure plan;

16 b. Modification to leachate collection system design;

17 c. Modification to liner system design; or

18 d. Modification to post-closure care plans;

19 2. A cabinet determination that the CCR unit, as previously permitted, is not likely to
20 comply with 401 KAR 30:031;

21 3. Good cause exists for modification of a compliance schedule, such as an act of God,
22 labor strike, materials shortage, or other events over which the permittee has little or no control
23 and for which there is no reasonable available remedy;

1 4. The cabinet receiving notification of expected closure and finding that one (1) or more
2 of the permit conditions are no longer warranted;

3 5. Conditions applicable in new or amended statutes and administrative regulations;

4 6. Modification necessary to protect human health or the environment pursuant to 401
5 KAR 30:031;

6 7. Conditions applicable as a result of a hearing or enforcement action as established in
7 401 KAR Chapter 40;

8 8. Change of ownership of the CCR facility; or

9 9. Expansion of the disposal capacity of a CCR unit.

10 (e)1. A CCR formal permit may be modified either at the request of the permittee or upon
11 the cabinet's initiative.

12 2. If the permittee requests the modification, the cabinet shall determine if the request is
13 justified in accordance with paragraph (d) of this section. If the cabinet determines not to modify
14 the permit, the cabinet shall notify the permittee in writing and give a reason for the decision.

15 3. If the cabinet makes a preliminary decision to modify a permit under this subsection,
16 then the cabinet shall prepare a draft modified permit incorporating the proposed changes. If the
17 permit modification requires public notice, the permittee shall publish a notice in accordance
18 with Section 8.

19 4. The cabinet shall provide the permittee with a copy of the draft modified permit and
20 allow ten (10) working days for comment. Comments received from the permittee shall be
21 considered in finalizing the draft modified permit.

22 5. The cabinet shall issue the modified permit as a final permit after consideration of the
23 comments or following the ten (10) day comment period if no comments are received.

1 6. The owners or operators of a CCR facility may request a hearing. A hearing shall be
2 requested pursuant to KRS 224.10-420 within thirty (30) days of issuance of the final permit by
3 the cabinet.

4 7. All terms of an existing permit shall remain in effect during the permit modification
5 request.

6 8.a. A permit modification requesting a lateral expansion shall comply with the
7 requirements of public notice in accordance with Section 8. Except for financial responsibility
8 requirements, all draft permits for horizontal expansions shall be prepared as established in 401
9 KAR 45:030, Section 8(2), (3), (5), (6), (7), and Section 9 and shall be based on the
10 administrative record required by 401 KAR 45:050, Section 3.

11 b.(i) The citation to 401 KAR Chapter 45 referenced in 401 KAR 45:030, 45:050, and
12 45:140 shall be replaced with 401 KAR Chapter 46.

13 (ii) The citation to 401 KAR 45:050 referenced in 401 KAR 45:030 shall be replaced
14 with 401 KAR 46:120, Section 8.

15 (iii) The citation to 401 KAR 45:040, Section 1(2) referenced in 401 KAR 45:030 shall
16 be replaced with 401 KAR 46:120, Section 2(4)(c).

17 (5)(a) A CCR Corrective Action and Closure Permit shall be required for existing CCR
18 surface impoundments if:

19 1. An owner or operator of a CCR unit:

20 a. Is no longer accepting CCR; and

21 b. Is unable to demonstrate that the CCR unit has met the requirements established in:

22 i. 40 C.F.R. 257.90 through 257.98;

23 ii. 40 C.F.R. 257.100 through 257.104; and

1 iii. 40 C.F.R. 257.60 through 257.64; or

2 2. A non-operating CCR facility with a CCRMU and there is a violation of the
3 groundwater protection standard at the CCR facility boundary.

4 (b)1. A Corrective Action and Closure Permit shall not be required for a CCR facility
5 with a CCRMU if the permittee can demonstrate the groundwater protection standard is being
6 met at the CCR facility boundary.

7 2. If an owner or operator is not required to obtain a Corrective Action and Closure
8 Permit in accordance with subparagraph (b)1., they may voluntarily apply for a Corrective
9 Action and Closure Permit.

10 (c) A CCR Corrective Action and Closure Permit shall include the submittal of a
11 complete, "CCR Corrective Action and Closure Permit Application", DEP 46 120 12, and the
12 contents of 401 KAR 46:130.

13 1. Upon review of the Conceptual Site Model and the Corrective Action Plan established
14 in 401 KAR 46:130 and other relevant requirements of 401 KAR Chapter 46, the Division of
15 Waste Management Director shall make a determination to approve, disapprove, or to issue a
16 notice of deficiency on the permit application.

17 2. Upon approval or denial of the CCR Corrective Action and Closure Permit, the cabinet
18 shall issue a public notice in accordance with Section 8.

19 Section 3[2]. Permit review and determination timetables.

20 (1) The submittal of permit applications and registrations, administrative completeness
21 determination, timetable exclusions, and timetable extensions for CCR permits shall be the same
22 as those established in 401 KAR 45:025, Sections 1, 2, 4, 5, and this section.

1 (2) All administratively complete permit applications and registrations shall be reviewed
2 and a determination made to issue, acknowledge, or deny the permit within the timetables
3 established in paragraphs (a) through (h) of this subsection.

4 (a) CCR Formal Permit: 180 calendar days.

5 (b) CCR Registered Permit-by-rule: ninety (90) calendar days.

6 (c) CCR Permit modifications: 180 calendar days.

7 (d) CCR Permit transfer: 180 calendar days.

8 (e) CCR Corrective Action and Closure Permit: 180 days.

9 (3) The timetables established in subsection (2) may be extended at the initiative of either the
10 cabinet or the applicant or registrant. The purpose and period of the extension shall be in writing
11 and, if agreed to by both parties, shall be signed by both the cabinet and the applicant or registrant.
12 The agreement to extend the timetable shall become part of the cabinet's permit or registration
13 file.~~[Notice of Concurrence.~~

14 ~~(1)(a) A permittee who has a permit by rule or a registered permit by rule as established~~
15 ~~in Section 1 of this administrative regulation may request a Notice of Concurrence from the~~
16 ~~cabinet.~~

17 ~~(b) A person, who does not have a registered permit by rule as established in Section 1(1)~~
18 ~~of this administrative regulation, and intends to construct a CCR unit, may request a Notice of~~
19 ~~Concurrence from the cabinet prior to beginning construction.~~

20 ~~(c) A person who intends to beneficially use CCR may request a Notice of Concurrence~~
21 ~~from the cabinet prior to beginning beneficial use.~~

22 ~~(2) A person requesting to obtain a Notice of Concurrence shall complete and submit the~~
23 ~~following information, if applicable:~~

1 (a) CCR Notice of Concurrence Request, DWM 4610;

2 (b) For a seismic hazard analysis of a new CCR landfill or lateral expansion of an existing
3 CCR landfill, a site specific, scenario-based, deterministic, seismic hazard assessment;

4 (c) For a stability analysis of a new CCR landfill or lateral expansion of an existing CCR
5 landfill, the landfill design demonstrating:

6 1. For subgrade, the factor of safety shall be a minimum of two and zero tenths (2.0);

7 2. For the liner components, the factor of safety shall be a minimum of one and one-fourth
8 (1.25);

9 3. For the final cover system, the factor of safety shall be a minimum of one and one-half
10 (1.5);

11 4. For the synthetic liner material and structural synthetic materials, a maximum elongation
12 of ten (10) percent; and

13 5. A minimum seismic factor of safety of one and zero tenths (1.0);

14 (d) Additional information necessary to enable the cabinet to make a determination on the
15 issuance of the Notice of Concurrence;

16 (e)1. If for the unencapsulated beneficial use of CCR involving placement on the land of
17 12,400 tons or more in non-roadway applications, a check or money order made payable to the
18 Kentucky State Treasurer in the amount of \$2,500; or

19 2. If for a person, who has not obtained a registered permit by rule as established in Section
20 4(1) of this administrative regulation, and intends to construct a CCR unit, a check or money order
21 made payable to the Kentucky State Treasurer in the amount of \$5,000; and

22 (f) A narrative with supporting documentation, a certification statement, and seal, from a
23 professional engineer or professional geologist, licensed in accordance with KRS Chapter 322 or

1 ~~KRS Chapter 322A, that the information prepared by the professional engineer or professional~~
2 ~~geologist, and submitted with the notice of concurrence request, meets the applicable portions of~~
3 ~~401 KAR 46:110 and paragraphs (b) and (c) of this subsection.~~

4 ~~(3) The cabinet shall review the submittal request for a Notice of Concurrence within 365~~
5 ~~days of receipt and issue in writing to the applicant a:~~

6 ~~(a) Notice of Concurrence stating the cabinet concurs that the information submitted in~~
7 ~~accordance with this section is determined to meet applicable criteria in 401 KAR Chapter 46;~~

8 ~~(b) Deficiency letter from the cabinet that the submittal is incomplete or that additional~~
9 ~~information is necessary to enable the cabinet to issue the Notice of Concurrence; or~~

10 ~~(c) Notice that the cabinet does not concur that the information submitted in accordance~~
11 ~~with this section meets the applicable criteria in 401 KAR Chapter 46.~~

12 ~~(4)(a) Failure by the applicant to provide the requested information and documentation~~
13 ~~within ninety (90) days of issuance of a deficiency letter established in subsection (3)(b) of this~~
14 ~~section shall cause the CCR Notice of Concurrence Request, DWM 4610, to expire.~~

15 ~~(b) More than two (2) deficiency letters shall not be issued in accordance with subsection~~
16 ~~(3)(b) of this section, after which the CCR Notice of Concurrence Request, DWM 4610, shall~~
17 ~~expire.~~

18 ~~(c) Expiration of the CCR Notice of Concurrence Request, DWM 4610, shall not prevent~~
19 ~~the applicant from reapplying if the requested documentation becomes available.~~

20 ~~(5)(a) The cabinet may rescind or modify in writing the Notice of Concurrence if the~~
21 ~~applicant or permittee is not in compliance with 401 KAR Chapter 46.~~

22 ~~(b) The cabinet shall rescind the Notice of Concurrence in writing if the applicant submitted~~
23 ~~a false certification.]~~

Section 4[3]. Transition of a Permit Issued in Accordance with 401 KAR Chapter 45 Permit Requirements.

(1) A permittee who is subject to 401 KAR Chapter 46 and was issued a permit prior to October 15, 2026 shall continue to have their permit in effect.

(2) Permits issued prior to October 15, 2026 may be modified or updated to include applicable conditions required by 401 KAR Chapter 46.~~[notify the cabinet in writing of the permittee's intent to meet the requirements of 401 KAR Chapter 46 by no later than May 1, 2017, if the permittee possesses a:~~

~~(a) Special waste permit by rule in accordance with 401 KAR 45:060;~~

~~(b) Special waste registered permit by rule in accordance with 401 KAR 45:070; or~~

~~(c) Formal permit for special waste in accordance with 401 KAR 45:030.~~

~~(2) Upon issuance by the cabinet of a registered permit by rule, a permit issued pursuant to 401 KAR Chapter 45 for management, disposal, or beneficial reuse of CCR shall terminate if the permittee is subject to 401 KAR Chapter 46.]~~

Section 5[4]. Annual Fees.

(1)(a)1. The owner or operator of a CCR unit shall pay a \$30,000~~[\$15,000]~~ annual fee for each facility in operation except for a facility with all CCR units in [ø] post-closure.

2. The owner or operator of a CCR unit in post-closure shall pay a \$5,000 annual fee.

(b) An owner or operator of a CCR unit shall notify the cabinet in writing upon completion of post-closure activities as established in 401 KAR 46:110, Section 6, and shall no longer be subject to annual fees established in this section.

(2) Payment shall be submitted to the Solid Waste Branch of the Division of Waste Management no later than July 31 of each year.

(3) The owner or operator shall complete and submit with the payment the CCR Annual Fee Form, DEP 46_120_2~~[DWM-4620]~~.

(4) A check or money order shall be made payable to the Kentucky State Treasurer.

(5) The annual fee shall be due July 31, 2017, and every year after.

(6)(a) The owner or operator of a CCR unit may request an extension to the deadline. The extension shall not exceed thirty (30) days.

(b) The extension request shall be in writing and shall be received by the Solid Waste Branch of the Division of Waste Management prior to the deadline.

Section 6~~[5]~~. Beneficial Use of CCR Reporting Requirements. The user shall submit to the cabinet an annual report of the beneficial use activity undertaken in the previous calendar year by March 31 that identifies the:

(1) Name and address of the CCR generator;

(2) Tonnage of CCR beneficially used;

(3) Name and address of each user of CCR; and

(4) Specific use of the CCR.

Section 7~~[6]~~. Noncompliances.

(1) The cabinet shall take any appropriate enforcement action, including corrective action, pursuant to 401 KAR Chapter 40, KRS 224.10-410, or 224.10-420, if the permittee is not operating in compliance with 401 KAR Chapter 46.

(2) The cabinet may revoke, modify, or suspend a CCR permit issued in accordance with 401 KAR Chapter 46~~[permit by rule or registered permit by rule]~~ pursuant to 401 KAR 40:040 upon a final determination of noncompliance with 401 KAR Chapter 46.

Section 8~~[7]~~. Financial Assurance and Public Notice Requirements.

1 (1) Except as established in subsection 6 of this section, owners and operators of CCR units
2 shall not be required to maintain financial assurance [sufficient to complete closure and post-
3 closure requirements established in 401 KAR 46:110:

4 ~~(a) For new CCR units; and~~

5 ~~(b) Existing CCR units that were required to establish financial assurance in accordance~~
6 ~~with 401 KAR 45:080].~~

7 (2) Public information procedures shall apply to applicants for:

8 (a) A new CCR formal permit;

9 (b) A permit for a lateral expansion of a CCR unit;

10 (c) A transfer of ownership of a CCR facility with a CCR formal permit; and

11 (d) 1. Proposed Approval of the Corrective Action Plan; or

12 2. Proposed Approval of the Corrective Action and Closure Permit.

13 (3) Public information procedures for CCR Formal Permits shall be as established in 401
14 KAR 45:050, Sections 2 through 9.

15 (4) Public notice for the assessment of corrective measures and proposed selected remedy
16 shall be run concurrently.

17 (5) The cabinet may require public information procedures for other permit actions or
18 modifications if a request is made with respect to an application or modification.

19 (6)(a) Financial assurance criteria and bond requirements shall apply to the owner and
20 operator of a CCR landfill.

21 ~~(b) [requirements shall be in accordance with 401 KAR 45:080, Sections 4, 7, 9, and 10.~~

1 (3)] The cabinet shall release the financial assurance mechanism required by this section
2 upon notification of completion of post-closure requirements referenced in 40 C.F.R. 257.104(e)
3 as established in 401 KAR 46:110.

4 (c) The owner or operator shall use one (1) of the mechanisms established in paragraph (d)
5 of this subsection, to satisfy the following criteria:

6 1. Ensure that the amount of funds shall be sufficient to cover the costs of closure and post-
7 closure care of the CCR landfill;

8 2. Ensure that the funds shall be available in a timely fashion; and

9 3. Guarantee the availability of the required amount of coverage prior to the initial receipt
10 of CCR for new CCR landfills or lateral expansions of CCR landfills.

11 (d)1. Before the cabinet shall issue a construction and operation permit, the owner or
12 operator of a CCR landfill that is required to post financial assurance pursuant to this subsection
13 shall complete a performance agreement on the “CCR Facility Performance Agreement”, DEP
14 46_120_8 form.

15 2. To satisfy the financial requirement, the owner or operator shall submit a performance
16 bond and one (1) of the following:

17 a. A surety bond which is executed by submitting to the cabinet a completed “CCR Facility
18 Surety Bond”, DEP 46_120_9 form and a copy of the surety bond agreement;

19 b. A letter of credit submitted on the “CCR Facility Irrevocable Letter of Credit”, DEP
20 46_120_7 form; or

21 c. An escrow agreement submitted on the “CCR Facility Escrow Agreement”, DEP
22 46_120_6 form.

1 (e) The owner or operator of a publicly owned facility shall provide a budget for the
2 permitting, construction, operation, closure, and post-closure care of the facility. The budget shall
3 be revised and submitted annually. If elements of the facility's permitting, construction, operation,
4 closure, or post-closure care are to be accomplished by contract or agreement, a copy of the
5 contract or agreement shall be submitted to the cabinet.

6 (f)1. The cabinet may accept other satisfactory financial assurance as adequate financial
7 responsibility for a CCR landfill exclusively owned and operated by a CCR generator on property
8 owned by the CCR generator for the purpose of accepting CCR exclusively from the CCR
9 generator.

10 2. The owner of a CCR landfill as described in subparagraph 1. of this paragraph may
11 satisfy the requirements for financial assurance by demonstrating that they pass a financial test in
12 accordance with 401 KAR 48:310, Section 17.

13 3. The "Corporate Guarantee for Closure or Closure Care, DEP Form 6053-E and Letter
14 from Chief Financial Officer on Corporate Financial Test, DEP Form 6053-F shall be replaced
15 with the "CCR Facility Corporate Guarantee and Financial Test", DEP 46_120_11 form.

16 (g) The owner or operator of a CCR landfill may provide an insurance policy to
17 demonstrate financial assurance for closure or post-closure care of the CCR landfill. The insurance
18 policy shall conform with the requirements of 401 KAR 48:310, Section 13 and shall be submitted
19 on the "CCR Facility Certificate of Insurance", DEP 46_120_10 form.

20 ~~[(4)(a) A public notice shall be published in a daily or weekly newspaper of major~~
21 ~~circulation located in the county or counties where the property where the proposed CCR unit is~~
22 ~~located. If there is no daily or weekly newspaper of major circulation in the county or counties~~
23 ~~where the proposed CCR unit is located, public notice shall mean publication of required~~

1 information in a daily or weekly newspaper of major circulation in a county adjacent to the county
2 or counties where the property is located.

3 ~~(b) Public notice shall include the information contained on the form incorporated by~~
4 ~~reference in Section 8(1)(c) of this administrative regulation.]~~

5 Section 9. Transfer of Permits.

6 (1) A permit shall not be transferred to any person without prior approval of the cabinet
7 based on the submitted application. A person requesting to transfer a CCR formal permit for an
8 existing CCR facility shall submit a completed "Application to Transfer CCR Unit Permit", DEP
9 46_120_1. The application shall be required if a person requests that the name on the permit be
10 changed to a different person or entity or if the permittee is a corporation and fifty-one (51) percent
11 or more of the stock is sold to a person who was not previously a stockholder, or was a stockholder
12 owning less than five (5) percent of the stock.

13 (2) On the basis of the submitted application, the cabinet shall make a preliminary
14 determination to approve or disapprove a CCR formal permit transfer within 180 calendar days
15 from the initial receipt of the application.

16 (3) If the transfer application is incomplete, the cabinet shall notify the applicant in writing
17 of all the deficiencies. Periods of deficiency shall not be counted against the review time frame
18 established in subsection (3) of this section. Failure to submit information noted by the cabinet
19 related to the deficiencies within ninety (90) calendar days of receipt of the notice of deficiency
20 shall be grounds for disapproval of the transfer application.

21 (4) If the cabinet makes a preliminary determination to approve the transfer application,
22 the applicant shall publish a public notice in accordance with Section 8.

1 (5) After the public notice has been published by the applicant, the cabinet shall provide a
2 public comment period in accordance with Section 8.

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

5 (7) A person requesting to transfer a CCR registered permit-by-rule shall submit a
6 registration in accordance with 401 KAR 45:070, Section 2(2) through (4) and Section 4.

7 Section 10. Modification, Suspension, and Revocation of a Permit.

8 (1) The cabinet may modify, suspend, or revoke a permit issued in accordance with 401
9 KAR Chapter 46 for:

10 (a) Reasons established in 401 KAR 40:040, Section 1(1) through (3), (5), or (6);

11 (b) Violations of a condition or a variance of the CCR formal permit; or

12 (c) Transfer of the facility to another person without prior approval of the cabinet.

13 (2)(a) If the cabinet determines to modify, suspend, or revoke a permit issued pursuant to
14 401 KAR Chapter 46, the cabinet shall notify the permittee in a writing stating the reasons for
15 the determination.

16 (b) Notice shall be sent to the address provided to the cabinet by the owner.”

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

18 (4)(a) Owners or operators of a CCR facility may file a request for a hearing.

19 (b) A request shall be pursuant to KRS 224.10-420 upon notice from the cabinet that a
20 permit has been suspended, modified, or revoked pursuant to this administrative regulation.

21 Section 11[8]. Incorporation by Reference.

22 (1) The following material is incorporated by reference:

1 (a) "Application to Transfer CCR Unit Permit", DEP 46_120_1, October 2026["CCR
2 Notice of Concurrence Request", DWM 4610, January 2017;]
3 (b) "CCR Annual Fee Form", DEP 46_120_2, October 2026[DWM 4620, September
4 2016]; [and]
5 (c) "CCR Corrective Action and Closure Permit Application", DEP 46_120_12, October
6 2026;
7 (d) "CCR Facility Certificate of Insurance", DEP 46_120_10, October 2026;
8 (e) "CCR Facility Corporate Guarantee and Financial Test", DEP 46_120_11, October
9 2026;
10 (f) "CCR Facility Escrow Agreement", DEP 46_120_6, October 2026;
11 (g) "CCR Facility Irrevocable Letter of Credit", DEP 46_120_7, October 2026;
12 (h) "CCR Facility Performance Agreement", DEP 46_120_8, October 2026;
13 (i) "CCR Facility Surety Bond", DEP 46_120_9, October 2026;
14 (j) "CCR Formal Permit Application", DEP 46_120_3, October 2026;
15 (k) "Modification of a CCR Formal Permit", DEP 46_120_5, October 2026; and
16 (l) "Registered Permit-by-Rule for CCR Facility", DEP 46_120_4[DWM 4600, January
17 2017].

18 (2) This material may be inspected, copied, or obtained, subject to applicable copyright
19 law, at the Division of Waste Management, 300 Sower Boulevard, 2nd Floor, Frankfort,
20 Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

21 (3) This material may also be obtained on the division's Web site at
22 eec.ky.gov/environmental-protection/waste.

401 KAR 46:120 Coal combustion residuals (CCR) permit program is approved for filing.

Date

10/14/26


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
Assistant Director II
Division of Waste Management
300 Sower Blvd., 2nd Floor
Telephone: (502)782-0863
Louanna.Aldridge@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

401 KAR 46:120

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 coal combustion residual (CCR) permit program by establishing applicability and requirements for a CCR permit and registered permit-by-rule.

(b) The necessity of this administrative regulation: KRS 224.10-100 and KRS 224.50-760(1)(d) authorizes the cabinet to promulgate administrative regulations for the management of special wastes. This administrative regulation establishes the applicability and requirements for a CCR permit and registered permit-by-rule under the CCR program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 and KRS 224.50-760 authorizes the cabinet to promulgate administrative regulations for the management of special wastes. This administrative regulation establishes the CCR permit program by establishing applicability and requirements for a CCR permit and registered permit-by-rule.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 224.10-100 and KRS 224.50-760 authorizes the cabinet to promulgate administrative regulations for the management of special wastes. This administrative regulation establishes the CCR permit program by establishing applicability and requirements for a CCR permit and registered permit-by-rule.

(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: This amendment establishes a permitting process for CCR landfills and surface impoundments.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish a permitting program for CCR landfills and surface impoundments detailing requirements to ensure consistency with federal standards pursuant to 40 C.F.R. 257.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by establishing a permitting program for CCR landfills and surface impoundments detailing requirements for the management of CCR and ensures consistency with federal standards pursuant to 40

C.F.R 257.

- (d) How the amendment will assist in the effective administration of the statutes: This amendment establishes an administrative and regulatory mechanism necessary for the Cabinet to oversee CCR facilities and ensure that CCR is managed and disposed of in a manner consistent with KRS Chapter 224.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Six (6) utility companies or 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 amendment will require regulated entities to submit an application or registration as required by the permitting process, follow public notice procedures, and submit the required federal internet documentation 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 administrative regulation will cost facilities with CCR units an annual fee of \$30,000. This administrative regulation also costs a \$5,000 annual fee for facilities with all CCR units in post-closure.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit by adhering to one regulatory standard and receiving a permit to operate a CCR facility.

(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 this administrative regulation will be sourced from the CCR facility annual fee as established by this administrative regulation, in addition to a one-time federal grant providing approximately \$136,000 to establish the program.

(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 will require an increase in the annual fee from \$15,000 to \$30,000. If all CCR units are in post-closure, the annual fee is decreased to \$5,000 for the facility.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation will require an increase in the annual fee from \$15,000 to \$30,000. If all CCR units are in post-closure, the annual fee is decreased to \$5,000 for the facility.

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

Tiering is applied to the annual fee structure. 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.

FEDERAL MANDATE ANALYSIS COMPARISON

401 KAR 46:120

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(1) Federal statute or regulation constituting the federal mandate. 40 C.F.R. 257.50-257.107

(2) State compliance standards. KRS 224.10-100, 224.50-760

(3) Minimum or uniform standards contained in the federal mandate. 40 C.F.R. 257.50-257.107

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

This administrative regulation is more prescriptive to demonstrate compliance equivalent to federal standards. This administrative regulation establishes a permitting process under statutory authority pursuant to KRS 224.10-100 and KRS 224.50-760.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

KRS 224.10-100 and KRS 224.50-760 authorizes the cabinet to promulgate administrative regulations for the management of special waste. The permitting process established in this administrative regulation demonstrates compliance equivalent to federal standards.

FISCAL IMPACT STATEMENT

401 KAR 46:120

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, 224.40-305
- (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

- (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 annual fee established in this administrative regulation is estimated to generate \$420,000 annually 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.

- (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: 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 this administrative regulation.

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

Cost Savings: If all CCR units located at a facility are in post-closure, the annual fee is decreased to \$5,000.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? As facility move all CCR units into post-closure, the annual fee is decreased to \$5,000.

(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.

(a) (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.

SUMMARY OF MATERIAL INCORPORATED BY REFERENCE

This administrative regulation incorporates by reference the “Application to Transfer CCR Unit Permit”, DEP 46_120_1, October 2026. This document is to be submitted by entities requesting a transfer of a CCR Unit Permit.

This document consists of 3 pages.

This administrative regulation incorporates by reference "CCR Annual Fee Form", DEP 46_120_2, October 2026. This document is to be submitted by entities submitting an annual fee.

This document consists of 3 pages

This administrative regulation incorporates by reference the “CCR Corrective Action and Closure Permit Application”, DEP 46_120_12, October 2026. This document is to be submitted by entities requesting a Closure Permit or undergoing corrective action.

This document consists of 4 pages.

This administrative regulation incorporates by reference the “CCR Facility Certificate of Insurance”, DEP 46_120_10, October 2026. This document is to be submitted by entities requesting a certificate of insurance.

This document consists of 3 pages.

This administrative regulation incorporates by reference the “CCR Facility Corporate Guarantee and Financial Test”, DEP 46_120_11, October 2026. This document is to be submitted by entities required to complete a corporate guarantee and financial test.

This document consists of 5 pages.

This administrative regulation incorporates by reference the “CCR Facility Escrow Agreement”, DEP 46_120_6, October 2026. This document is to be submitted by entities required to complete an escrow agreement.

This document consists of 5 pages.

This administrative regulation incorporates by reference the “CCR Facility Irrevocable Letter of Credit”, DEP 46_120_7, October 2026. This document is to be submitted by entities required to complete an irrevocable letter of credit.

This document consists of 4 pages.

This administrative regulation incorporates by reference the “CCR Facility Performance Agreement”, DEP 46_120_8, October 2026. This document is to be submitted by entities required to complete a performance agreement.

This document consists of 3 pages.

This administrative regulation incorporates by reference the “CCR Facility Surety Bond”, DEP 46_120_9, October 2026. This document is to be submitted by entities required to submit a surety bond.

This document consists of 3 pages.

This administrative regulation incorporates by reference the “CCR Formal Permit Application”, DEP 46_120_3, October 2026. This document is to be submitted by entities requesting a formal permit.

This document consists of 4 pages.

This administrative regulation incorporates by reference the “Modification of a CCR Formal Permit”, DEP 46_120_5, October 2026. This document is to be submitted by entities requesting modification of a formal permit.

This document consists of 3 pages.

This administrative regulation incorporates by reference the "Registered Permit-by-Rule for CCR Facility", DEP 46_120_4, October 2026. This document is to be submitted by entities requesting a registered permit-by-rule.

This document consists of 3 pages.

SUMMARY OF CHANGES TO MATERIAL INCORPORATED BY REFERENCE

This administrative regulation incorporates by reference "CCR Annual Fee Form", DEP 46_120_2, October 2026. This document is to be submitted by entities submitting an annual fee.

This document consists of 3 pages and has been amended to reflect changes in contact information for the division as well as the annual fee increase of \$15,000 to \$30,000.

