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**ENERGY AND ENVIRONMENT CABINET  
DEPARTMENT FOR ENVIRONMENTAL PROTECTION**

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COMMISSIONER

300 SOWER BOULEVARD  
FRANKFORT, KENTUCKY 40601

April 27, 2017

**NOTICE**

**Transition for 401 KAR Chapter 45 Special Waste Beneficial Reuse Permits**

Dear Permittee,

The Cabinet anticipates the promulgation of a new Chapter 46 to Title 401 of the Kentucky Administrative Regulations (KAR) to regulate the management, disposal, and beneficial use of coal combustion residuals (CCR). The proposed regulations may be found online at: <http://www.lrc.ky.gov/kar/TITLE401.HTM> by scrolling down the page to "Chapter 46 Coal Combustion Residuals (CCR)".

The Cabinet has been informed by the Legislative Research Commission that there will not be a meeting of the Interim Joint Committee on Natural Resources and Energy during the month of April. As a result, these regulations are expected to become effective on May 4, 2017. The purpose of this notice is to clarify the initial requirements under the proposed 401 KAR Chapter 46 to transition existing Chapter 45 permits.

Once the Chapter 46 regulations become effective, pursuant to 401 KAR 46:120 Section 1(2), a beneficial use of CCR user shall be deemed to have a permit by rule (PBR) without having made an application with the cabinet, if:

- (a) The user is not in violation of 401 KAR Chapter 46 or 401 KAR 30:031;
- (b) The beneficial use of CCR does not present a threat or potential threat to human health or the environment;
- (c) The beneficial use of CCR does not result in a nuisance condition created by the fugitive emissions of CCR;
- (d) The user characterized the nonhazardous nature of the CCR in accordance with 401 KAR 31:030; and
- (e) The user submits an annual report to the Cabinet pursuant to Section 5 of this administrative regulation.

The current date for existing facilities with a permit under 401 KAR Chapter 45 to complete their transition notification that is included in the proposed regulations is May 1, 2017 (see proposed 401 KAR 46:120 Section 3 for the transition notice). This is prior to the anticipated effective date of the regulations. This discrepancy was caused when the regulations were deferred



by the Cabinet for one month at the request of the Administrative Regulation Review Subcommittee. Because the Interim Joint Committee on Natural Resources and Energy will not be meeting prior to the effective date, there is not an opportunity for the Cabinet to adjust this date in the regulation.

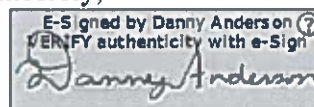
Because the Cabinet lacks authority to enforce the regulation prior to it becoming effective, the Cabinet will consider transition notices received by the Cabinet's Division of Waste Management, Solid Waste Branch on the effective date of the regulation to be timely submitted. In addition, the Cabinet has determined that it will not pursue enforcement action against an existing Special Waste Beneficial Reuse permittee subject to Chapter 46 as long as the transition notice required by 401 KAR 46:120 Section 3 is received by the Cabinet's Division of Waste Management, Solid Waste Branch on or before June 1, 2017.

The Cabinet recognizes that the format of the notice required by Section 3 is not specifically stated in regulation. The Cabinet anticipates members of the regulated community will submit an official letter or similar correspondence to satisfy this requirement. The notification correspondence shall contain a table listing and discussing all beneficial uses of CCR for each activity that will transition. This notification shall be signed by a person with signature authority. For recordkeeping purposes, it is very helpful if the Agency Interest ID number, Solid Waste permit number, and Activity I.D. number are referenced. A notice of concurrence is not required in order to transition. A notice of concurrence is a voluntary action, in any case.

When the transition notification is received and reviewed, a letter issued by the Cabinet will confirm receipt of the transition notice, identify the transitioned activity(ies), and terminate the Chapter 45 permitted activity(ies).

If you have any questions, please contact me at (502)782-6305.

Sincerely,

An e-signature box with a grey background. At the top, it reads "E-Signed by Danny Anderson" with a small circular icon to the right. Below that, it says "VERIFY authenticity with e-Sign". At the bottom, there is a handwritten signature in cursive that reads "Danny Anderson".

Danny Anderson, Manager  
Solid Waste Branch

