

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (Amendment)

5 401 KAR 39:060. General requirements.

6 RELATES TO: KRS 61.870, 61.884, 224.1-400, 224.10, 224.40-310, 224.46, 224.99, 40  
7 C.F.R. Parts 124, 260, 261, 268, 270, 42 U.S.C. 2011 et seq.

8 STATUTORY AUTHORITY: KRS 224.10-100, 224.46-505, 224.46-510(3), 224.46-520,  
9 224.50-130, 224.50-135

10 NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 authorizes the Energy  
11 and Environment Cabinet to promulgate administrative regulations for the generation, treatment,  
12 storage, recycling, and disposal of hazardous wastes. KRS 224.46-510(3) and 224.50-130 require  
13 the cabinet to identify the characteristics of and to list hazardous wastes. KRS 224.46-505 and  
14 224.46-520 authorize the cabinet to control land disposal of hazardous waste to be protective of  
15 human health and the environment. KRS 224.46-520 requires that persons engaging in the  
16 treatment, storage, disposal, and recycling of hazardous waste obtain a permit, and to establish  
17 standards for these permits, to require adequate financial responsibility, and to establish minimum  
18 standards for closure for all facilities, and the post-closure monitoring and maintenance of  
19 hazardous waste disposal facilities. This administrative regulation establishes the general  
20 requirements for hazardous waste management systems.

21 Section 1. Applicability. This administrative regulation shall apply to a person, state, or federal

1 agency that engages in the generation, treatment, storage, disposal, transportation, or management  
2 of waste defined or identified as hazardous in KRS Chapter 224 or 401 KAR Chapter 39, including  
3 hazardous substances spilled into the environment that meet the criteria of hazardous waste.

4 Section 2. Hazardous Waste Management System. (1) Except as established in subsections (2)  
5 through (6) of this section and Section 6 of this administrative regulation, the requirements for  
6 hazardous waste management systems shall be as established in 40 C.F.R. Part 260, except:

7 (a) 40 C.F.R. 260.34(a)(1) to (3);

8 (b) 260.10; and

9 (c) The last sentence of 40 C.F.R. 260.34(a).

10 (2) The public notice requirements established in 40 C.F.R. 260.20(c) shall be replaced with  
11 the requirements established in paragraphs (a) and (b) of this subsection. If the tentative decision  
12 is to:

13 (a) Deny the petition, the cabinet shall notify the petitioner in writing and notify the public as  
14 required by subsection (3)(b) of this section; or

15 (b) Grant the petition, the cabinet shall propose a regulatory amendment, and file the proposed  
16 amendment with the Legislative Research Commission pursuant to KRS Chapter 13A, including  
17 the rule making and public comment process contained therein.

18 (3) The final decision making procedure established in 40 C.F.R., 260.20(e) shall be replaced  
19 with procedures established in paragraphs (a) and (b) of this subsection.

20 (a) The cabinet shall make a final decision after evaluating all public comments.

21 (b) The final decision shall be published either in the Kentucky Administrative Register, a daily  
22 or weekly major local newspaper of general circulation, or other methods reasonably calculated to  
23 give actual notice of the action to the persons potentially affected by it.

1 (4) A check made payable to the Kentucky State Treasurer in the amount required by KRS  
2 224.46-014 shall be submitted to the cabinet with the submission of a completed petition for each  
3 hazardous waste that is petitioned for delisting.

4 (5) Upon approval by the cabinet of a petition to exclude a waste from a particular facility in  
5 accordance with 401 KAR Chapter 39, the excluded waste shall be subject to the disposal  
6 requirements established in 401 KAR Chapter 47 and the conditions as specified in the approved  
7 exclusion.

8 (6) A variance shall be a written waiver from a requirement of 401 KAR Chapters 39 and 40,  
9 upon the finding by the cabinet that the absence of the provision shall provide adequate protection  
10 to human health and the environment consistent with KRS Chapter 224.

11 (a)1. A request for variance from a requirement of 401 KAR Chapters 39 and 40 shall be  
12 submitted in a report in sufficient detail to provide to the cabinet the analyses, procedures, controls,  
13 and other pertinent data necessary to support the request for variance.

14 2. The granting of a request by the cabinet shall be in writing and shall specify appropriate  
15 conditions, including duration, limitations, and review procedures to provide adequate protection  
16 to human health and the environment.

17 (b) The cabinet shall grant a variance or permit modification from the requirements of 401 KAR  
18 Chapters 39 and 40 if a waste permit requirement, or the process and equipment used, is determined  
19 by the cabinet to be:

20 1. Insignificant as a potential hazard to human health or the environment because of its small  
21 quantity, low concentration, physical, biological, or chemical characteristics, or method of  
22 operation used; or

23 2. Handled, processed, or disposed of pursuant to administrative regulations of another

1 governmental agency, if the administrative regulations of other agencies comply with the  
2 requirements of the waste management administrative regulations, including federal exemption  
3 rule-making actions pertaining to hazardous waste management.

4 (c) The cabinet shall not grant any request for a variance that shall:

5 1. Make the hazardous waste program less stringent than the federal hazardous waste  
6 management program;

7 2. Conflict with Kentucky Revised Statutes;

8 3. Conflict with a regulatory provision stating that no variance shall be granted; or

9 4. Vary the financial responsibility requirements in a manner conflicting with 401 KAR 39:090  
10 or Section 3 of this administrative regulation.

11 Section 3. Identification and Listing of Hazardous Waste. (1) Except as established in  
12 subsections (2) through (8) of this section and Section 6 of this administrative regulation, the  
13 requirements for identification and listing of hazardous waste shall be as established in 40 C.F.R.  
14 Part 261, except:

15 (a) 40 C.F.R. 261.4(b)(17);

16 (b) 40 C.F.R. 261.149; and

17 (c) 40 C.F.R. 261.150.

18 (2) Wastes shall be considered radioactive mixed wastes if the wastes contain both hazardous  
19 wastes subject to KRS Chapter 224 and radioactive wastes subject to the Atomic Energy Act, 42  
20 U.S.C. 2011 et. seq. Unless specifically exempted by 401 KAR 39:090, Section 3, radioactive  
21 mixed wastes shall be subject to the requirements of 401 KAR Chapters 39 and 40.

22 (3) Facilities required to comply with the export notification requirements referenced in 40  
23 C.F.R. 261.39(a)(5) and 40 C.F.R. 261.41, shall also notify the cabinet.

- 1 (4) In addition to those substances listed in 40 C.F.R. 261, Subpart D, substances identified in
- 2 Table I shall be listed hazardous wastes in the Commonwealth of Kentucky.

Table I	
Ky. Hazardous Waste No.	Substance
N001	GB (isopropyl methyl phosphonofluoridate) and related compounds (H)
N002	VX (O-ethyl-S-(2-diisopropyl-aminoethyl)-methyl phosphonothiolate) and related compounds (H)
N003	H (bis (2-chloroethyl) sulfide) and related compounds (H)
N101	Uncontaminated M67 Rocket Motor Assembly, Propellant Component of the Rocket Motor, Shipping Firing Tubes, and End-Caps associated with GB munitions
N102	Uncontaminated M67 Rocket Motor Assembly, Propellant Component of the Rocket Motor, Shipping Firing Tubes, and End-Caps associated with VX munitions
N201	<u>Metal Parts Treater Residue or Static Detonation Chamber Residues and Ash, and Post Thermal Oxidizer Solids and Sludges</u> associated with GB munitions or related wastes

N202	Metal Parts Treater Residue <u>or Static Detonation Chamber Residues and Ash, and Post Thermal Oxidizer Solids and Sludges</u> associated with VX munitions or related wastes
N203	Static Detonation Chamber Residue and Ash, <u>and Post Thermal Oxidizer Solids and Sludges</u> associated with H munitions
N301	Agent Hydrolysate associated with GB munitions
N302	Agent Hydrolysate associated with VX munitions
N401	Energetic Hydrolysate associated with GB munitions
N402	Energetic Hydrolysate associated with VX munitions
N501	Aluminum Precipitate associated with treated GB wastes
N502	Aluminum Precipitate associated with treated VX wastes
N601	Reverse Osmosis Reject or Supercritical Water Oxidation Effluent associated with treated GB wastes
N602	Reverse Osmosis Reject or Supercritical Water Oxidation Effluent associated with treated VX wastes

N701	Lab Wastes associated with treated GB wastes and GB-containing lab wastes treated to destroy agent with caustic
N702	Lab Wastes associated with treated VX wastes and VX-containing lab wastes treated to destroy agent with caustic
N703	Lab Wastes associated with treated H wastes and H-containing lab wastes treated to destroy agent with caustic
N801	Off-gas Treatment (OTM) condensate associated with treated GB wastes, <u>Off-gas Treatment System liquids including Quench Fluid, Scrubber Fluids, Electrostatic Precipitator Fluids, Process Fluid Bleed Water, Post-Thermal Oxidizer Condensates and related wastes associated with Static Detonation Chamber treatment of GB munitions</u>
N802	Off-gas Treatment (OTM) condensate associated with treated VX wastes, <u>Off-gas Treatment System liquids including Quench Fluid, Scrubber Fluids, Electrostatic Precipitator Fluids, Process Fluid Bleed Water, Post-Thermal Oxidizer Condensates and related wastes associated with</u>

	<u>Static Detonation Chamber treatment of VX munitions</u>
<u>N803</u>	<u>Off-gas Treatment System liquids including Quench Fluid, Scrubber Fluids, Post-Thermal Oxidizer Condensates and related wastes associated with Static Detonation Chamber treatment of H munitions</u>
N901	Spent Decontamination Solution associated with treated GB wastes
N902	Spent Decontamination Solution associated with treated VX wastes
<u>N903</u>	<u>Spent Decontamination Solution associated with treated H wastes</u>
<u>N1001</u>	<u>GB contaminated waste equipment, tools, and construction materials that have been decontaminated in accordance with United States Army Guidelines and have been determined to be safe for storage or transport, and approved by the Cabinet as no longer acutely hazardous</u>
<u>N1002</u>	<u>VX contaminated waste equipment, tools, and construction materials that have been decontaminated in accordance with United States Army Guidelines and have been determined to be</u>



	<u>safe for storage or transport, and approved by the Cabinet as no longer acutely hazardous</u>
<u>N1003</u>	<u>H contaminated waste equipment, tools, and construction materials that have been decontaminated in accordance with United States Army Guidelines and have been determined to be safe for storage or transport, and approved by the Cabinet as no longer acutely hazardous</u>

1 (5) In addition to the agricultural wastes established in 40 C.F.R. 261.4(b)(2), prunings and crop  
2 residues shall be agricultural wastes.

3 (6) In addition to the copy of the written state agreement required in 40 C.F.R. 261.4(b)(11)(ii)  
4 being submitted to the U.S. EPA, a copy shall be submitted to the cabinet at the same time.

5 (7) If multiple facilities are covered by the same financial assurance mechanism as referenced  
6 in 40 C.F.R. 261.143(g), 40 C.F.R. 261.147(a)(1)(i), and 40 C.F.R. 261.147(b)(1)(i), evidence of  
7 financial assurance shall be submitted to the cabinet and, as applicable, to the Regional  
8 Administrator and other state directors.

9 (8) In addition to the excluded hazardous wastes in 40 C.F.R. Part 261, Appendix IX, the cabinet  
10 granted an exclusion for the multi-source landfill leachate (EPA Hazardous Waste F039) generated  
11 after February 2, 2017, at Ashland Route 3 Landfill, Kentucky 3, Catlettsburg, Kentucky. This  
12 subsection shall serve as publication of the exclusion in accordance with Section 2(3)(b) of this  
13 administrative regulation.

14 (9) Any special waste identified as a hazardous waste as established in this administrative  
15 regulation shall be:

1 (a) Regulated pursuant to 401 KAR Chapter 39; and

2 (b) Exempt from the assessment of the Kentucky hazardous waste management fund as  
3 established in KRS 224.46-580(7).

4 Section 4. Land Disposal Restrictions. Except as established in Section 6 of this administrative  
5 regulation, the requirements for land disposal restrictions shall be as established in 40 C.F.R. Part  
6 268.

7 Section 5. Hazardous Waste Permit Programs and Procedures. (1) Except as established in  
8 subsections (2) through (18) of this section and Section 6 of this administrative regulation, the  
9 requirements for hazardous waste permit programs and procedures shall be as established in 40  
10 C.F.R. Parts 124 and 270, except:

11 (a) 40 C.F.R. 270.1(c)(2)(ix);

12 (b) 40 C.F.R. 270.14(b)(18); and

13 (c) 40 C.F.R. 124, Subparts C and D.

14 (2) In addition to public notice requirements of 40 C.F.R. 124, the statement contained in KRS  
15 224.40-310(5)(e) shall be included in each public notice.

16 (3) The applicant or facility shall reimburse the cabinet for the costs of newspaper  
17 advertisements, duplication, and postage for any required public notice or distribution to a mailing  
18 list.

19 (4) In addition to the requirements of 40 C.F.R. 124.10(a)(1)(iii), public notice shall be given  
20 if a hearing has been granted pursuant to 401 KAR Chapters 4 and 5 or 805 KAR Chapter 1.

21 (5) In addition to the federal appeal procedures referenced in 40 C.F.R. Parts 124 and 270, the  
22 cabinet appeal procedures shall be as established in KRS 224.10-420 through 224.10-470 and 400  
23 KAR Chapter 1 for cabinet issued permits.

1 (6)(a) Any owner or operator required to obtain a permit shall complete and submit to the  
2 cabinet:

- 3 1. EPA form 8700-23 as referenced in 40 C.F.R. 270.13; and
- 4 2. Part A Application Addendum, DWM 7058A.

5 (b) If any of the information required by paragraph (a) of this subsection changes, the owner or  
6 operator shall submit revised forms, established in paragraph (a) of this subsection, to the cabinet  
7 within sixty (60) days of the change, except as established in 401 KAR 39:080, Section 5(4).

8 (7) In addition to the noncompliance reporting requirements referenced in 40 C.F.R.  
9 270.30(1)(6), the permittee shall immediately notify the cabinet of a release as established in KRS  
10 224.1-400.

11 (8) In addition to the requirements established in 40 C.F.R. 270.10, any person applying for a  
12 construction and operation permit shall submit the information and documentation required in  
13 KRS 224.46-520(1) to include documentation of the applicant's decisions with respect to the  
14 proposal and justification for actions taken.

15 (9) In addition to the requirements of 40 C.F.R. Parts 124 and 270, for a hazardous waste  
16 disposal site or facility, that meets the criteria established in paragraph (a) of this subsection, a  
17 permit shall not be approved or issued by the cabinet, or a permit-by-rule applied, prior to the  
18 determinations established in KRS 224.40-310(6).

19 (a) This subsection shall apply to an owner or operator of:

20 1. A hazardous waste disposal site or facility that meets the definition of a waste disposal facility  
21 as defined by KRS 224.40-310(1); and

22 2.a. A new or proposed hazardous waste landfill, incinerator, or other site or facility for the land  
23 disposal of hazardous waste;

1        b. An existing hazardous waste landfill, incinerator, or other site or facility for the land disposal  
2 of hazardous waste that requests a permit modification that does not meet the criteria of a Class 1  
3 or 2 modification; or

4        c. A new or existing hazardous waste treatment facility or hazardous waste storage facility that  
5 requests a permit modification to include a disposal facility instead of or in addition to any  
6 permitted hazardous waste activity already conducted by the owner or operator.

7        (b) The applicant shall obtain local government approval for incinerators or land disposal  
8 facilities, as established in KRS 224.40-310(7).

9        (10) An emergency permit shall specify that:

10        (a) All remaining hazardous waste and residues shall be removed at the end of the term of the  
11 emergency permit to a properly permitted hazardous waste site or facility in order to be exempted  
12 from the financial requirements of 401 KAR 39:090;

13        (b) The permittee shall comply with the closure performance standards established in 401 KAR  
14 39:090, Section 8; and

15        (c) The cabinet shall recover its actual and necessary costs associated with the permittee's  
16 failure to properly close the unit specified in the emergency permit.

17        (11) Upon collection of trial burn data, referenced in 40 C.F.R. 270.62(b)(9), the data shall  
18 become part of the Part B permit application.

19        (12)(a) In accordance with 401 KAR 39:090, the applicant shall establish financial assurance  
20 prior to issuance of a permit or sixty (60) days before the date on which hazardous waste is first  
21 received for treatment, storage, or disposal.

22        (b) The amount of financial assurance established for closure or post-closure shall be in  
23 accordance with the plan prepared pursuant to 401 KAR 39:090.

1 (c) The owner or operator of the hazardous waste site or facility shall submit a demonstration  
2 of financial assurance as established in KRS 224.46-520(3) and 401 KAR 39:090.

3 (13) An owner or operator of existing hazardous waste sites or facilities that close under interim  
4 status without submitting Part B of the permit application shall, at a minimum, comply with the  
5 corrective action requirements established in 401 KAR 39:090, Section 1.

6 (14) In addition to the requirements in 40 C.F.R. 270.10 and KRS 224.40-330, any initial,  
7 renewal, or change to ownership permit application shall include the following background  
8 information and past compliance record:

9 (a) Organizational structure:

10 1. If the applicant is a sole proprietor, a detailed listing of any general or limited partnership,  
11 joint venture, or corporation in which the applicant holds as much as or more than a twenty-five  
12 (25) percent interest, whether ownership or otherwise;

13 2. If the applicant is a general or limited partnership, a detailed listing of:

14 a. Each of the partners and their respective interests, whether ownership or otherwise;

15 b. Any corporation, joint venture, limited liability corporation, general or limited partnership,  
16 or proprietorship in which any of the constituent partners of the applicant holds as much as or more  
17 than a twenty-five (25) percent interest whether ownership or otherwise; and

18 c. Any corporation, joint venture, proprietorship, limited liability corporation, or general or  
19 limited partnership that holds as much as or more than a twenty-five (25) percent interest, whether  
20 ownership or otherwise in any of the non-individual constituent partners comprising the applicant;

21 3. If the applicant is a corporation, a detailed listing of:

22 a. The officers, directors, and major stockholders holding as much as or more than a twenty-five  
23 (25) percent interest;

1        b. Any corporation of which the applicant is either a subsidiary or which holds as much as or  
2 more than a twenty-five (25) percent interest, either in stock or assets, in the applicant;

3        c. Any corporations that are either subsidiaries of the applicant or in which the applicant holds  
4 as much as or more than a twenty-five (25) percent interest, either in stock or assets; and

5        d. Any proprietorship, general or limited partnership, or joint venture in which the applicant  
6 holds as much as or more than a twenty-five (25) percent interest, whether ownership or otherwise;

7 or

8        4. If the applicant is a joint venture, a detailed listing of:

9        a. All other joint ventures, and the respective interests, whether ownership or otherwise of each;

10 and

11        b. Any proprietorship, general or limited partnership, joint venture, or corporation in which the  
12 applicant holds as much as or more than a twenty-five (25) percent interest, whether ownership or  
13 otherwise;

14        (b) For each individual or other entity listed in paragraph (a) of this subsection, a detailed listing  
15 of all violations of federal or state laws, rules, or administrative regulations concerning the areas  
16 established in subparagraphs 1. through 5. of this paragraph, whether judicial or administrative  
17 proceedings are pending or completed, that have resulted or might result in either criminal  
18 convictions or civil or administrative fines as much as or more than \$1,000:

19        1. Solid or hazardous waste management;

20        2. Air pollution;

21        3. Water;

22        4. Occupational Safety and Health Administration with respect to hazardous materials or  
23 hazardous substances; or

1       5. Transportation with respect to hazardous materials or hazardous substances; and

2       (c) For each individual or other entity listed in paragraph (a) of this subsection, a current  
3 financial statement prepared by a certified public accountant.

4       (15) The owner or operator of the hazardous waste site or facility shall complete and submit an  
5 evaluation of subsurface geologic formations and surface topography for solution or karst terrain.

6       (a) If the owner or operator demonstrates to the cabinet that the facility is not underlain by  
7 soluble limestone, the owner or operator shall be exempt from the requirements of this subsection.

8       (b) Except as established in paragraph (a) of this subsection, the owner or operator shall  
9 demonstrate that:

10       1. The facility has been designed to withstand any gradual or sudden land subsidence, which is  
11 characteristic of areas underlain by soluble limestone; and

12       2. Contamination into or through any fractures, channels, or solution features shall not occur.

13       (c) Except as established in paragraph (a) of this subsection, the owner or operator shall:

14       1.a. Establish the presence and extent of all fractures, channels, and solution features in the  
15 bedrock beneath the facility and describe how these features shall be sealed, filled, isolated, or  
16 otherwise neutralized to prevent subsidence; and

17       b. Describe how solution features shall be monitored to demonstrate compliance with the  
18 criteria established in paragraph (b) of this subsection; or

19       2.a. Design, operate, and maintain a double-liner system, which shall be installed beneath the  
20 facility and that shall include a leak detection system that meets the criteria established in  
21 paragraph (b) of this subsection; and

22       b. Comply with all of the requirements of 401 KAR 39:090, Section 1, for the design of the  
23 double-lined facility as applicable.

1 (16) The owner or operator of the hazardous waste site or facility shall submit the actual test  
2 data demonstrating the liner is or will be compatible with the waste, if applicable.

3 (17)(a) The applicability established in 40 C.F.R. 124.31(a) shall be replaced with this  
4 paragraph.

5 1. The requirements in 40 C.F.R. 124.31 shall apply to all RCRA part B applications seeking:  
6 a. An initial permit for a hazardous waste management unit;  
7 b. A renewal of a permit for a unit with a significant change in facility operations;  
8 c. A RCRA standardized permit as referenced in 40 C.F.R. 270, Subpart J; or  
9 d. A renewal of a standardized permit for a unit with a significant change in facility operations,  
10 as defined by 40 C.F.R. 124.211(c).

11 2. The requirements in 40 C.F.R. 124.31 shall not apply to permit modifications pursuant to 40  
12 C.F.R. 270.42 or to applications that are submitted for the sole purpose of conducting post-closure  
13 activities or post-closure activities and corrective action at a facility.

14 (b) The applicability established in 40 C.F.R. 124.32(a) shall be replaced with this paragraph.

15 1. The requirements in 40 C.F.R. 124.32 shall apply to RCRA part B applications seeking:  
16 a. An initial permit for a hazardous waste management unit; or  
17 b. A renewal of a permit for a unit pursuant to 40 C.F.R. 270.51.

18 2. The requirements in 40 C.F.R. 124.32 shall not apply to a hazardous waste unit for which a  
19 facility owner or operator is seeking:

20 a. A RCRA standardized permit referenced in 40 C.F.R. part 270, subpart J;  
21 b. A permit modification pursuant to 40 C.F.R. 270.42; or  
22 c. A permit application submitted for the sole purpose of conducting post-closure activities or  
23 post-closure activities and corrective action at a facility.



1 (c) The applicability established in 40 C.F.R. 124.33(a) shall be replaced with this paragraph.  
2 The requirements in 40 C.F.R. 124.33 shall apply to applicants seeking RCRA permits for  
3 hazardous waste management units.

4 (18) The biennial reporting referenced in 40 C.F.R. 270.60(a)(3)(v) shall be replaced with  
5 annual reporting.

6 Section 6. Exceptions and Additions. (1) In the event of a release or threatened release of a  
7 hazardous substance, pollutant, or contaminant to the environment in a quantity that might present  
8 an imminent or substantial danger to human health or the environment, the facility authorized  
9 representative shall:

10 (a) Immediately notify the cabinet's twenty-four (24) hour emergency response line as required  
11 by KRS 224.1-400; and

12 (b) Provide a written report of the incident or accident within seven (7) days of the release, if  
13 required by the cabinet pursuant to KRS 224.1-400.

14 (2) Dates included in the federal regulations referenced in 401 KAR Chapter 39 that occurred  
15 before the effective date of this administrative regulation shall not be construed as creating a  
16 retroactive right or obligation in accordance with 401 KAR Chapter 39 if that right or obligation  
17 did not exist in this administrative regulation prior to the date the federal regulations were  
18 referenced.

19 (3) If a right or obligation existed in accordance with federal regulations based on a date in  
20 federal regulations, and there is a period from the date cited in the text until the date the  
21 requirements initially became effective in 401 KAR Chapter 39, these administrative regulations  
22 shall not contravene or countermand the legal application of the federal regulation for that period.

23 (4)(a) For initial issuance, modification, revocation and reissuance, or termination, of a permit,

1 the applicable administrative regulations shall be those regulatory provisions that are in effect upon  
2 the date that the cabinet makes a final determination upon the permit action and are applicable to  
3 those specific permit conditions being modified or revoked and reissued.

4 (b) The procedures that shall be used for permit modification, revocation and reissuance, or  
5 termination shall be those regulatory procedures that are in effect upon the date of the cabinet's  
6 final determination.

7 (5) In addition to RCRA, Section 7003 KRS 224.10-410 shall apply.

8 (6) In addition to RCRA, Section 3008 KRS 224.10-420 through 224.10-470, 224.46-530, and  
9 224.99-010 shall apply.

10 (7) In addition to RCRA, Section 3004 KRS 224.46-520, 401 KAR 39:090, and Section 4 of  
11 this administrative regulation shall apply.

12 (8)(a) As referenced in 401 KAR Chapter 39, the requirements in RCRA, Section 3010 shall be  
13 replaced with the requirement that any person generating or transporting a substance, or owning  
14 or operating a facility for treatment, storage, disposal, or recycling of the substance, shall register  
15 with the cabinet after promulgation of an administrative regulation identifying a substance by its  
16 characteristics or listing as hazardous waste subject to 401 KAR Chapter 39.

17 (b) The registration shall be filed as established in 401 KAR 39:080, Section 1(2) and within  
18 ninety (90) days after promulgation or revision of the administrative regulation unless another  
19 registration date is established in the administrative regulation.

20 (9) Any person who submits information to the cabinet pursuant to KAR Chapters 39 and 40,  
21 may assert a claim of business confidentiality or trade secret covering part or all of that information  
22 by following the procedures established in KRS 224.10-212 and 400 KAR 1:060.

23 (a) Information covered by a claim shall be disclosed by the cabinet as established in 400 KAR

1 1:060 and KRS Chapter 61, except that information required by 401 KAR 39:080, Section 1, which  
2 is submitted in notification of intent to export a hazardous waste, shall be provided to the U.S.  
3 Department of State, U.S. EPA, and the appropriate authorities in a receiving country regardless  
4 of any claims of confidentiality.

5 (b) If a claim does not accompany the information received by the cabinet, the claim may be  
6 made available to the public without further notice to the person submitting the claim.

7 (10) A person shall not deliver hazardous waste to a facility for treatment, storage, or disposal,  
8 unless the owner or operator has:

9 (a) Registered with the cabinet as an existing hazardous waste facility in operation on or before  
10 November 19, 1980;

11 (b) Qualified for interim status in accordance with 401 KAR 39:090, Section 2; or

12 (c) Been granted a hazardous waste site or facility permit by the cabinet.

13 (11) A person shall not engage in the storage, treatment, or disposal of hazardous waste without  
14 first obtaining construction or operation permits from the cabinet in accordance with KRS 224.46-  
15 520(1).

16 (12) Issuance of a federal permit to own or operate a hazardous waste site or facility shall not  
17 relieve the owner or operator of the responsibility to comply with the requirements of 401 KAR  
18 Chapter 39.

19 (13) All permit forms or permit submissions to the cabinet shall include:

20 (a) One (1) original and two (2) paper copies of the form;

21 (b) One (1) electronic copy, which shall be an exact match to the original;

22 (c) Up to seven (7) additional copies of the application, if requested by the cabinet for public  
23 review;

1 (d) The Agency Interest (AI) number, if known; and

2 (e) A signature of the authorized representative.

3 (14) In addition to 40 C.F.R. 270.43, the cabinet may terminate a permit during its term or deny  
4 a permit renewal application for a violation of any requirement of KRS Chapter 224 or 401 KAR  
5 Chapter 39.

6 (15) In addition to 40 C.F.R. 270.50, a permit for the nerve agents established in KRS 224.50-  
7 130 and Section 3 of this administrative regulation shall be reviewed by the cabinet five (5) years  
8 after the date of permit issuance or reissuance and shall be modified if necessary, as established in  
9 Section 5 of this administrative regulation.

10 (16) The permittee shall have paid the applicable fees due as established in KRS 224.46 and  
11 401 KAR 39:120.

12 (17) Except for closure, post-closure, and corrective action permit applications, failure to  
13 submit a requested application on time, or to submit in full the information required by 401 KAR  
14 Chapter 39, shall result in denial of the application in accordance with this administrative  
15 regulation.

16 (18) Past performance of the owner or operator shall be considered in the review and in the  
17 determination of any requirement for specialized conditions pursuant to KRS 224.40-330.

18 (19) The provisions of 401 KAR Chapter 39 shall be compatible with and complementary to  
19 each other. If an administrative regulation is found to be contradictory, the more stringent  
20 provision shall apply.

21 (20) The citations to Sections 301, 307, and 402 of the Clean Water Act shall also include any  
22 applicable Kentucky requirements as established in 401 KAR Chapter 5.

23 (21) The citations to Sections 60, 61, and 63 of the Clean Air Act shall also include any

1 applicable Kentucky requirements as established in 401 KAR Chapters 50 through 65.

2 (22) The citations to the Safe Drinking Water Act shall also include any applicable Kentucky  
3 requirements as established in 401 KAR Chapters 6, 8, 9, and 10, and 805 KAR Chapter 1.

4 (23) In addition to 40 C.F.R. 258 and Subtitle D, 401 KAR Chapters 45, 47, and 48 shall apply.

5 (24) In addition to RCRA, Subtitle C KRS 224.46 shall apply.

6 (25) In addition to RCRA, Section 3008h KRS 224.10-100(18), KRS 224.99-010(5), and KRS  
7 224.46-530 shall apply.

8 Section 7. Incorporation by Reference. (1) "Part A Application Addendum", DWM 7058A,  
9 June 2017, is incorporated by reference.

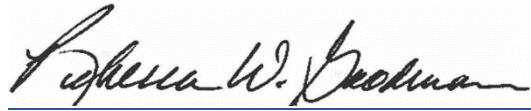
10 (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at  
11 the Division of Waste Management, 300 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601,  
12 Monday through Friday, 8:00 a.m. to 4:30 p.m.

13 (3) This material may also be obtained on the division's Web site at [eec.ky.gov/environmental-](http://eec.ky.gov/environmental-)  
14 [protection/waste](http://eec.ky.gov/environmental-protection/waste).

401 KAR 39:060 approved for filing.

February 22, 2021

Date

A handwritten signature in black ink, reading "Rebecca W. Goodman", is written over a light blue horizontal line. The signature is cursive and fluid.

Rebecca W. Goodman, Secretary  
Energy and Environment Cabinet

## PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A virtual public hearing on this administrative regulation shall be held on May 25, 2021, at 6:00PM, EST. The public hearing can be accessed at the following website address: <https://global.gotomeeting.com/join/430333789> or can be accessed by phone: (872) 240-3212 using access code: 430-333-789. Please note that registration is required to participate in or speak at this hearing. To register, you must either email your name and mailing address to [heather.alexander@ky.gov](mailto:heather.alexander@ky.gov) or mail this information to Heather Alexander, Division of Waste Management, 300 Sower Boulevard, 2<sup>nd</sup> Floor, Frankfort, KY 40601. Be sure to include in the information if you plan to speak during the virtual hearing. Individuals interested in this hearing shall notify this agency in writing/email by five workdays prior to the hearing (no later than May 18, 2021) of their intent to attend and/or speak. If no notification of intent to speak at the hearing is 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 submitted to the contact person listed below. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written/emailed comments shall be accepted through May 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Heather Alexander  
300 Sower Blvd., 2<sup>nd</sup> Floor  
Frankfort, KY 40601  
Telephone: (502) 782-6303  
Fax: (502) 564-4245  
Email: [heather.alexander@ky.gov](mailto:heather.alexander@ky.gov)

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

401 KAR 39:060

Contact Person: Heather Alexander  
Telephone: (502) 782-6303  
Email: heather.alexander@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the general requirements for hazardous waste management systems.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the general requirements for hazardous waste management systems.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 and the waste management provisions of KRS Chapter 224 require the Energy and Environment Cabinet to promulgate administrative regulations for the generation, treatment, storage, recycling, and disposal of hazardous wastes. KRS 224.46-510(3) requires the cabinet to identify the characteristics of and to list hazardous wastes. KRS 224.46-505 and 224.46-520 authorize the cabinet to control land disposal of hazardous waste to be protective of human health and the environment. KRS 224.46-520 requires that persons engaging in the storage, treatment, disposal, and recycling of hazardous waste obtain a permit, to establish standards for these permits, to require adequate financial responsibility, to establish minimum standards for closure for all facilities and the post-closure monitoring and maintenance of hazardous waste disposal facilities. KRS 224.50-130(2) and (7) requires waste codes listings for Blue Grass Chemical Agent-Destruction Pilot Plant (BGCAPP). The BGCAPP chemical weapon wastes are not listed hazardous wastes under the federal Resource Conservation and Recovery Act program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements for hazardous waste management systems as required by KRS 224.10-100, 224.46-510(3), 224.46-505, and 224.46-520 for the generation, treatment, storage, recycling, and disposal, standards for permits, financial assurance requirements, and closure and post-closure standards for hazardous wastes.

(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 will revise and add additional waste codes as requested by the Blue Grass Army Depot for the treatment and disposal of nerve agent munitions.

The basis for additional waste codes is due to several process changes at the BGCAPP facility over the course of the past 18 months, including the addition of the Rocket Warhead Containerization



System in the main plant facility as well as the proposed modifications to the current SDC 1200 facility and addition of the SDC 2000 facility. These waste codes will facilitate more accurate management, shipment, and disposal of all waste streams that are expected to be created in the facilities.

Amendments to waste codes N201 and N202 include non-liquid residues from the Static Detonation Chamber and Post Thermal Oxidizer processes. Amendments to waste code N203 include non-liquid residues from the Post Thermal Oxidizer.

Amendments to waste codes N801 and N802, and the addition of N803, include condensates associated with more detailed process listings in the Off-gas Treatment System. The addition of waste code N903 includes the decontamination solution for the mustard treated wastes, similar to the current waste codes N901 and N902 for the other types of munitions.

Proposed waste codes N1001, N1002, and N1003 include wastes that have met treatment and decontamination standards and no longer will carry the acutely toxic hazard.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish the general requirements for hazardous waste management systems. In particular, these waste codes will allow the facility, emergency response personnel, and disposal facilities to correctly identify and handle the generated hazardous waste.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100 and the waste management provisions of KRS Chapter 224 require the Energy and Environment Cabinet to promulgate administrative regulations for the generation, treatment, storage, recycling, and disposal of hazardous wastes. KRS 224.46-510(3) requires the cabinet to identify the characteristics of and to list hazardous wastes. KRS 224.46-505 and 224.46-520 authorize the cabinet to control land disposal of hazardous waste to be protective of human health and the environment. KRS 224.46-520 requires that persons engaging in the storage, treatment, disposal, and recycling of hazardous waste obtain a permit, to establish standards for these permits, to require adequate financial responsibility, to establish minimum standards for closure for all facilities and the post-closure monitoring and maintenance of hazardous waste disposal facilities. KRS 224.50-130(2) and (7) requires waste codes listings for Blue Grass Chemical Agent-Destruction Pilot Plant (BGCAPP). The BGCAPP chemical weapon wastes are not listed hazardous wastes under the federal Resource Conservation and Recovery Act program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment establishes requirements for hazardous waste management systems as required by KRS 224.10-100, 224.46-510(3), 224.46-505, 224.46-520, and 224.50-130 for the generation, treatment, storage, recycling, disposal, standards for permits, financial assurance requirements, and closure and post-closure standards for hazardous and chemical weapon wastes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect owners and operators of facilities that generate, transport, treat, store, and dispose of hazardous waste. There are approximately 16 treatment, storage, and disposal facilities, 384 large quantity

generators, 412 small quantity generators, 2,853 very small quantity generators, and 132 transporters in the Commonwealth of Kentucky.

(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 a new registration and Part A for Bluegrass Army Depot.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no increase in cost for complying with this administrative regulation. There is a potential for a decrease in compliance costs if a previously considered acute hazardous waste is determined to be a non-acute hazardous waste under the new listed waste codes.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits to owners and operators include compliance with both the federal and state regulations, and in those cases where an acute hazardous waste is now determined to be hazardous under the new listed waste codes, an owner or operator would have decreased costs for transport and disposal.

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

(a) Initially: This program is already in effect and costs \$2.9M to administer as a whole.

(b) On a continuing basis: \$2.9M, for this program, as a whole.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation would be achieved by a combination of restricted funds, general funds and grants from the federal Environmental Protection Agency. Funding for the Division of Waste Management's review of the applications related to BGCAPP is wholly provided through the Assembled Chemical Weapons Alternatives (ACWA) Cooperative Agreement, signed by the United States Army and Energy and Environment Cabinet.

(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: There is no need for an increase in funding or fees to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish or increase any fees directly or indirectly.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering is not applied. This administrative regulation applies to all entities who generate, transport, store, or dispose of hazardous waste. To apply tiering to the regulation would unduly regulate some entities while not regulating others.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

401 KAR 39:060

Contact Person: Heather Alexander  
Telephone: (502) 782-6303  
Email: heather.alexander@ky.gov

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact any units of state or local government that generate transport, store, or dispose of hazardous wastes as well as the Division of Waste Management.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.46-505, 224.46-510(3), 224.46-520, 224.50-130, 224.50-135 and 40 C.F.R. Parts 260, 261, 268, 270 and 124.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will not affect the expenditures and revenues of a state or local government agency as the hazardous waste program is already in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for state or local government as the hazardous waste program is already in effect. Currently the division receives \$1.3M in federal grant funding to administer this program, as a whole.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate additional revenue for state or local government as the hazardous waste program is already in effect. Currently the division receives \$1.3M in federal grant funding to administer this program, as a whole.

(c) How much will it cost to administer this program for the first year? This program is already in effect and costs \$2.9M to administer as a whole.

(d) How much will it cost to administer this program for subsequent years? \$2.9M, as a whole.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): \$1.3M in federal grant funding, as a whole.

Expenditures (+/-): \$2.9M, as a whole.

Other Explanation:

## FEDERAL MANDATE ANALYSIS COMPARISON

401 KAR 39:060

Contact Person: Heather Alexander  
Telephone: (502) 782-6303  
Email: heather.alexander@ky.gov

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. Parts 260, 261, 268, 270 and 124
2. State compliance standards. KRS 224.10-100, 224.46-505, 224.46-510(3), 224.46-520, 224.50-130, and 224.50-135.
3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. Parts 260, 261, 268, 270 and 124.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. This administrative regulation does impose stricter, additional, or different requirements than those required by the federal regulation. 401 KAR 39:060, Section 3, requires cabinet notification for exports, identifies and lists hazardous wastes generated through demilitarization of chemical weapons in the stockpile at Blue Grass Army Depot in Richmond, Kentucky, and identifies additional substances as listed hazardous wastes. KRS 224.50-130(2) and (7) requires waste codes listings for Blue Grass Chemical Agent-Destruction Pilot Plant (BGCAPP). The BGCAPP chemical weapon wastes are not listed hazardous wastes under the federal Resource Conservation and Recovery Act program.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The differences in this administrative regulation are statutory requirements.

## Detailed Summary of Material Incorporated by Reference

I. This administrative regulation incorporates by reference the "Part A Application Addendum", DWM 7058A, June 2017. This document is to be submitted by any owner or operator required to obtain a permit shall complete and submit to the cabinet.

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This document consists of 4 pages.