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<i>Emily B Caudill</i>
REGULATIONS COMPILER

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (New Administrative Regulation)

5 401 KAR 103:020. Decommissioning standards.

6 RELATES TO: KRS 224.10-100, 224.10-285, 224.43-345, 278.700 through 278.716

7 STATUTORY AUTHORITY: KRS 224.10-100(28), 224.10-100(30) and (31), 224.10-
8 285, 224.43-345, KRS 278.710(3), (4), (5), (7) through (10)

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) authorizes the cabinet
10 to promulgate administrative regulations not inconsistent with the provisions of law administered
11 by the cabinet. KRS 224.10-285 requires the Energy and Environment Cabinet to establish
12 monitoring and enforcement requirements for the obligation set for in KRS 278.710(3), (4), (5),
13 (7) through (10) and KRS 224.10-100(30) and (31). KRS 224.10-100(30) requires the Energy
14 and Environment Cabinet to monitor and enforce compliance of a merchant electric generating
15 entity to which a construction certificate has been issued and has generated pursuant to
16 obligations set forth in KRS 278.710(3), (4), (5), (7) through (10). This administrative regulation
17 establishes procedures for decommissioning plan technical requirements, decommissioning plan
18 updates, decommissioning cost estimate updates, and cases of abandonment.

19 Section 1. Technical Requirements of Decommissioning Plan. The owner-operator, or
20 person who controls or owns right to control any MEGF are subject to decommissioning

requirements and mitigation measures outlined in KRS 278.704 through KRS 278.710.(1)

This plan shall be certified by an independent professional engineer prior to submission to the cabinet.

(2) Unless otherwise stated in an accommodation contained within a lease agreement with the affected landowner, the decommissioning plan shall be designed to return the land to a substantially similar state as it was prior to the commencement of construction.

(3) Decommissioning plans filed with the cabinet shall minimally meet the following technical requirements:

(a) Provide an estimated lifespan of the MEGF, including an estimated period of useful life for system components;

(b) Identify the party responsible for decommissioning;

(c) Define conditions upon which decommissioning will be initiated, including a statement defining how notification will be made of intent to start the decommissioning process;

(d) The timeframe for commencement and completion of decommissioning activities;

(e) Include a revegetation plan, with native seed mixes, excluding any invasive species;

(f) Cost itemization of all estimated costs that factor into decommissioning the MEGF;

(g) Include the financial assurance mechanisms, in accordance with KRS 278.706 and 401 Chapter 103:030;

(h) Describe any agreement with landowners regarding decommissioning, including any special accommodations made to any affected landowner.

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

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

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

7 (i) Removal of any MEGF owned equipment and facilities, including:

8 1. Structures;

9 2. Fencing;

10 3. Roads;

11 4. Foundations or pads;

12 5. Erosion, sediment, and water control measures;

13 6. Modules or solar panels;

14 7. Racks;

15 8. Cables or wires;

16 9. Conduit;

17 10. Inverters; and

18 11. Transformers.

19 (j) Remove any underground components and foundations of above-ground facilities.

20 Underground components and facilities under this paragraph shall be removed to a depth of three
21 (3) feet below the surface grade of the land in or on which the component was installed;

22 Section 2. Decommissioning Plan Updates.

1 (1) Pursuant to KRS 278.710 all MEGFs shall submit an updated decommissioning plan
2 at least once every five (5) years. Decommissioning plan updates shall be submitted no later than
3 one hundred and eighty (180) days prior to the fifth (5th) anniversary of the commencement of
4 generation of electricity unless permission for a later date has been granted in writing by the
5 cabinet. The cabinet may, at any time, request updated information necessary for reevaluating the
6 decommissioning plan updates. Requests for updates shall include:

- 7 (a) Additional construction of equipment or facilities;
- 8 (b) Removal of equipment or facilities; or
- 9 (c) Changes in the facilities estimated decommissioning costs.

10 (2) Decommissioning plan updates shall:

- 11 (a) Be submitted in conjunction with a notarized MEGF Annual Report or
12 Decommissioning Plan Update Form, DWM 4657, including all required attachments;
- 13 (b) Include an updated estimation of decommissioning costs in accordance with Section 3
14 of this administrative regulation and 401 KAR 103:030; and

- 15 (c) Include any proposed measures to mitigate adverse impacts pursuant to KRS 278.710.

16 (3) Any engineering evaluation procured by the cabinet or at the cabinet's request and
17 referred to the Secretary to inform a final decision shall be considered preliminary, confidential,
18 and not open for public inspection until after final action by the Secretary.

19 (4) Decommissioning plan updates that require new construction will be subject to
20 standards in KRS 278.704 through KRS 278.714.

21 (5) Upon review and approval of the updated decommissioning plan by the cabinet, the
22 owner-operator, or person who controls or owns the right to control the MEGF shall file with the
23 cabinet an updated copy of the decommissioning bond or other similar security, in accordance

1 with 401 KAR 103:030, to reflect changes to the estimated cost of effectuating the
2 decommissioning plan or to the net present value or the net salvage value of the facility or its
3 components.

4 Section 3. Decommissioning Cost Estimates. (1) The applicants, owner-operator, or
5 person who controls or owns the right to control a merchant electric generating facility shall have
6 a detailed, written estimate, in current US dollar, of the cost to decommission the MEGF in
7 accordance with KRS 278.706 and KRS 278.710.

8 (2) The estimated cost shall equal the cost of completing the decommissioning plan of the
9 MEGF at the end of the useful life pursuant to the approved decommissioning plan. The cost
10 estimate shall include:

11 (a) Itemized costs for implementing, dismantling, removing, or disposing of all
12 structures, systems, components, and requirements described in Section 1 of this administrative
13 regulation;

14 (b) Incorporate an estimated decommissioning cost per megawatt valuation;

15 (c) Be recalculated at least once every five (5) years to accommodate for inflation or
16 depreciation;

17 (d) Include a defined useful life period of the MEGF; and

18 (e) Be certified by an independent, licensed engineer pursuant to KRS 278.706.

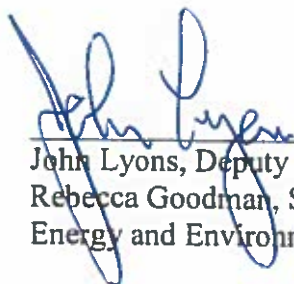
19 Section 4. Abandonment. In the event of abandonment or failure to complete
20 decommissioning obligations by the responsible party, pursuant to KRS 224.10-100, the cabinet
21 will draw upon the decommissioning bond and implement the decommissioning plan. Pursuant
22 to KRS 278.706, if any party makes a successful claim on the approved financial assurance, that
23 party shall be responsible for the requirements set forth in the decommissioning plan.

Section 5. Incorporated by Reference.

(1) "MEGF Annual Report or Decommissioning Plan Update" Form, DWM 4657, September 2023.

(2) This material may be inspected, copies, or obtained, subject to applicable copyright law, at Division of Waste Management, 300 Sower Boulevard, 2nd floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 5:00 p.m., from the website at eec.ky.gov/environmental-protection/waste.

401 KAR 103:020 Merchant Electric Generating facilities decommissioning standards is approved for filing.

 For
John Lyons, Deputy Secretary For
Rebecca Goodman, Secretary
Energy and Environment Cabinet

9/27/23
Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2023, at 10:00AM Eastern Standard Time. The public hearing can be accessed at the following website address: <https://us05web.zoom.us/j/81334701532?pwd=eWjHA2kpT9I6PWurOirAnFpuYads2k.1> using access code M00m5c. Please note that registration is required to participate in this hearing. You must either email your name and mailing address to Tyler.Shields@ky.gov or mail this information to Tyler Shields, Department for Environmental Protection, Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601. Please put "401 KAR 103:020" as the subject line, and state in the body of the message if you plan to speak during the hearing. Individuals interested in being heard at this hearing shall register to speak by December 14, 2023. If no one registers to speak by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. 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, 2023. 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: Tyler Shields
Environmental Control Supervisor
Department for Environmental Protection
Division of Waste Management
300 Sower Boulevard
Frankfort, Kentucky 40601
Phone (502) 782-5325
Fax (502) 564-4245
Email: Tyler.Shields@ky.gov (Subject line: "401 KAR 103:020")

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

401 KAR 103:020

Contact person: Tyler Shields, Environmental Control Supervisor

Phone: (502) 782-5325

Email: Tyler.Shields@ky.gov

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes procedures to monitor and enforce the cabinet's responsibilities for merchant electric generating facilities including technical requirements of a decommissioning plan, decommissioning plan updates, decommissioning cost estimates, and abandonment of a MEGF.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures of decommissioning a MEGF site, as well as decommissioning update requirements pursuant to KRS 278.710.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.10-285 requires the establishment of the procedures to monitor and enforce requirements obligations set forth in 278.710(3), (4), (5), (7) through (10) and KRS 224.10-100(30) and (31).
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes procedures to monitor and enforce decommissioning plans, updates, and abandonment of a MEGF pursuant to KRS 224.10-285.
- (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: N/A
 - (b) The necessity of the amendment to this administrative regulation: N/A
 - (c) How the amendment conforms to the content of the authorizing statutes: N/A
 - (d) How the amendment will assist in the effective administration of statutes: N/A
- (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 existing owners-operators, and successors of merchant electric generating facilities. There are currently thirty-five (35) approved MEGF construction certificates issued by the Public Service Commission (PSC), three (3) of which are currently under construction. Each MEGF that is or has been approved will be required to adhere to the requirements established in this regulation. As of August 16, 2023, nineteen (19) counties or

local municipal governments have established ordinances for decommissioning and financial assurance requirements. Pursuant to KRS 278.718, these local ordinances shall have primacy over KRS 278.704 through 278.708.

- (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: Entities that own-operate MEGFs within cities/counties that has not established decommissioning requirements will be held to requirements within this administrative regulation. Entities will have to submit the forms incorporated for updates to a decommissioning plan.
- (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 not have a cost for the entities identified.
- (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified will not accrue benefits as a result to compliance to these administrative regulations.

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

- (a) Initially: The agency will not incur any additional costs for the implementation of this administrative regulation initially.
- (b) On a continuing basis: The agency will not incur any continuing costs for the implementation of this administrative regulation.

- (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 the annual fee payment provided by MEGFs, in addition to potential penalties collected under KRS 224.99-010.

- (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:

No increase in fees or funding is necessary to implement this administrative regulation.

- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This administrative regulation does not establish any fees but does establish procedures for updating the costs of decommissioning the facility.

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

No tiering is not applied to this administrative regulation. There is no driving force to tier the decommissioning plan requirements, updates, or cost estimates within this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

401 KAR 103:020

Contact person: Tyler Shields Environmental Control Supervisor

Phone: (502) 782-5325

E-mail: Tyler.Shields@ky.gov

1. Federal statute or regulation constituting the federal mandate.

Not applicable.

2. State compliance standards.

KRS 224.10-100, KRS 224.10-285, KRS 224.43-345, and KRS 278.700 through 278.716

3. Minimum or uniform standards contained in the federal mandate.

Not applicable.

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 imposes stricter requirements as there is no federal mandate for the decommissioning of merchant electric generating facilities.

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

HB-4 mandated the Cabinet to promulgate administrative regulations for the monitoring and enforcement requirements for the obligations set forth in KRS 278.710(3), (4), (5), (7), (8), (9), and (10) and KRS 224.10-100(30) and (31).

FISCAL NOTE

401 KAR 103:020

Contact Person: Tyler Shields, Environmental Control Supervisor.

Phone: (502) 782-5325

Email: Tyler.Shields@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 state or local governments that own or operate a merchant electric generating facility as well as the Division of Waste Management. Local governments who have not established decommissioning requirements for MEGFs within their jurisdiction will be held to standards and requirements within this administrative regulation.

(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(28), 224.-10-100(30), 224.10-285, 224.43-345, 278.710(3), (4), (5), (7) through (10).

(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.

(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 governments in the first year.

(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 revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year?

The cost to administer the program for the currently approved thirty-five (35) facilities is \$278,000 annually. This total is the sum cost of hiring an Environmental Engineer II within the Solid Waste Branch for review of decommissioning plans and financial assurance documents, and an Environmental Scientist Advisor within the Field Operations Branch for site inspections. At the time of drafting this regulation, only three (3) of the thirty-five (35) facilities were under construction. Pursuant to KRS 278.710, the cabinet does not obtain authority over these facilities until the facility is constructed and generating electricity. Therefore, the cabinet cannot receive the annual fee until the facility is generating electricity. With no timetable of when these facilities will be

constructed and begin generating electricity it is challenging to estimate the total costs in the first year of the program.

(d) How much will it cost to administer this program for subsequent years?

The cost to administer the program for the currently approved thirty-five (35) facilities is \$278,000 annually. This total is the sum cost of hiring an Environmental Engineer II within the Solid Waste Branch for review of decommissioning plans and an Environmental Scientist Advisor within the Field Operations Branch for site inspections. At the time of drafting this regulation, only three (3) of the thirty-five (35) facilities were currently under construction. Pursuant to KRS 278.710, the cabinet does not obtain authority over these facilities until the facility is constructed and generating electricity. Therefore, the cabinet cannot receive the annual fee until the facility is generating electricity. With no timetable of when these facilities will be constructed and begin generating electricity it is challenging to estimate the total costs for subsequent years of the program. KRS 224.10-285 was implemented with the intention to make this a self-supported program, with revenue being generated from the merchant electric generating facility monitoring and enforcement fund.

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

Revenues (+/-): +\$16,000 collected from annual fees of the three (3) MEGFs that are currently under construction once they are constructed and generating electricity for sale. Two (2) of these facilities fall within the first tier of nameplate-rated capacity, with one (1) falling in the second tier. If all thirty-five (35) of the approved facilities were constructed and generating electricity within the first year of this administrative regulation taking effect, revenues generated from annual fees would total roughly \$272,000 (13 facilities within the first tier, 11 facilities within the second tier, and 11 facilities within the third tier). It should be noted that the Cabinet has authority to hire an independent engineer to review any assessment reports at the cost of the entity, pursuant to KRS 278.710.

Expenditures (+/-): -\$278,000 cost of hiring the two positions stated above in 3(c)/3(d).

Other Explanation: There is no other explanation.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

The proposed administrative regulation will not generate cost savings for any regulated entities in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

The proposed administrative regulation will not generate cost savings for any regulated entities in subsequent years.

(c) How much will it cost the regulated entities for the first year?

There is no known cost to the regulated entities in the first year.

(d) How much will it cost the regulated entities for subsequent years?

There is no known cost to the regulated entities in subsequent years.

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

Cost Savings(+/-): There is no known cost savings.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: This administrative regulation establishes procedures for technical requirements of a decommissioning plan, updates to the decommissioning plan, and estimating decommissioning costs. Potential costs for the entity include the Cabinet's hiring of an independent engineer for the review of decommissioning plan updates.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]

This proposed administrative regulation will not have a major economic impact.

SUMMARY OF MATERIAL INCORPORATED BY REFERENCE

- I. This administrative regulation incorporates by reference the “MEGF Annual Report or Decommissioning Plan Update” Form, DWM 4657, September 2023. This document shall be submitted annually by the current owner-operator as a reporting mechanism for waste(s) generated and disposal methods. This document shall also be submitted for revisions of a decommissioning plan, which is required for any transfer of ownership, a minimum of every five (5) years, or as needed pursuant to KRS 278.710.

This document consists of one page.