

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (Amendment)

5 401 KAR 45:080. Financial requirements and bonds for special waste facilities.

6 RELATES TO: KRS 224.1 [~~224.01~~], 224.10, 224.40, 224.46, 224.50, 224.99, Chapter 355

7 STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 requires the cabinet
9 to adopt administrative regulations for the managing, processing, or disposal of wastes. KRS 224.40-
10 305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or
11 facility to obtain a permit. This chapter establishes the permitting standards for special waste sites or
12 facilities, and the standards applicable to all special waste sites or facilities. This administrative
13 regulation sets forth the financial requirements for closure and postclosure of special waste sites or
14 facilities but does not establish financial assurance requirements for biosolids from the treatment of
15 domestic sewage or sewage sludge from a treatment facility. Information related to the permitting of
16 biosolids is located in 401 KAR 45:105.

17 Section 1. Applicability. The financial assurance criteria and bond requirements apply to the
18 owner or operator of special waste landfills, Type A landfarming and composting sites or facilities,
19 and research, development and demonstration sites or facilities, and other sites or facilities if required
20 by the cabinet as part of a remedy or requirement set forth in a resolution of permit violations.

1 Section 2. Closure Cost Estimate. The owner or operator shall have a detailed, current written
2 estimate, in dollars, of the cost of hiring a third party to close the special waste disposal site or facility
3 in accordance with the closure plan developed to satisfy the closure requirements in Section 4 of 401
4 KAR 45:100 and Section 5 of 401 KAR 45:110.

5 (1) The estimate shall equal the cost of closing the special waste disposal site or facility at
6 the point in the active life when the extent and manner of its operation would make closure the most
7 expensive. The cabinet may adjust the figure for inflation and other factors. The owner or operator
8 shall base the cost estimate on the following elements that are applicable depending on the type of
9 site or facility:

10 (a) Design;

11 (b) Site grading and drainage;

12 (c) Hauling and placing of each element of the approved cap;

13 (d) Final grading and drainage of the cap;

14 (e) Revegetation of the cap; and

15 (f) Quality control and construction certification.

16 (2) The owner or operator shall increase the closure cost estimate and the amount of financial
17 assurance provided under Section 5 of this administrative regulation if changes to the closure plan
18 or special waste disposal site or facility conditions increase the maximum cost of closure at any time
19 during the active life.

20 (3) The owner or operator may request a reduction in the closure cost estimate and the amount
21 of financial assurance provided under Section 5 of this administrative regulation if the owner or
22 operator [he] can demonstrate that the cost estimate exceeds the maximum cost of closure at any
23 time over the life of the special waste disposal site or facility.

1 (4) The owner or operator shall keep a copy of the latest closure cost estimate at the special
2 waste disposal site or facility until the owner or operator has been notified by the cabinet that the
3 owner or operator [he] has been released from closure financial assurance requirements under
4 Section 5 of this administrative regulation.

5 Section 3. Postclosure Cost Estimate.

6 (1) (a) The owner or operator shall have a current, detailed written estimate, in dollars, of the
7 cost of hiring a third party to conduct each phase of postclosure monitoring and maintenance of the
8 special waste site or facility in accordance with the postclosure plan developed to satisfy the
9 postclosure requirements of Section 4 of 401 KAR 45:100 and Section 5 of 401 KAR 45:110.

10 (b) The postclosure cost estimate for each phase of postclosure used to demonstrate financial
11 assurance in Section 6 of this administrative regulation shall be calculated by multiplying the annual
12 cost estimate for each phase of postclosure by the number of years of postclosure care required.

13 (2) The cost estimate for each phase of postclosure shall be based on the most expensive
14 costs of postclosure during that phase.

15 (3) The owner or operator shall increase the amount of the postclosure cost estimate and the
16 amount of financial assurance provided under Section 6 of this administrative regulation if changes
17 in the postclosure plan or facility conditions increase the maximum costs of postclosure.

18 (4) The owner or operator may request a reduction in the postclosure cost estimate and the
19 amount of financial assurance provided under Section 6 of this administrative regulation if the owner
20 or operator [he] can demonstrate to the satisfaction of the cabinet that the cost estimate exceeds the
21 maximum costs of postclosure remaining over the postclosure period.

22 (5) The owner or operator shall keep a copy of the latest postclosure cost estimate at the site
23 or facility until [~~he has been~~] notified by the cabinet that the owner or operator [he] has been released

1 from postclosure financial assurance requirements for the entire facility under Section 6 of this
2 administrative regulation.

3 Section 4. Financial Mechanisms. The owner or operator shall use one (1) of the financial
4 mechanisms specified in Section 7 or 10 of this administrative regulation, which satisfies the
5 ~~[following]~~ criteria in subsection (1) through (3) of this section. The financial assurance mechanism
6 shall:

7 (1) ~~[The financial assurance mechanism shall]~~ Ensure that the amount of funds is sufficient
8 to cover the costs of closure and postclosure care;

9 (2) ~~[The financial assurance mechanism shall]~~ Ensure that funds shall be available in a timely
10 fashion; and

11 (3) ~~[The financial assurance mechanisms shall]~~ Guarantee the availability of the required
12 amount of coverage prior to the initial receipt of special waste.

13 Section 5. Closure Financial Assurance. The owner or operator of a special waste site or
14 facility subject to this administrative regulation shall establish, in accordance with Section 4 of this
15 administrative regulation, financial assurance for closure of the facility, in an amount equal to the
16 most recent closure cost estimate prepared in accordance with Section 2 of this administrative
17 regulation. The owner or operator shall provide continuous coverage for closure until released from
18 financial assurance requirements pursuant to Section 4 of 401 KAR 45:100 or Section 5 of 401 KAR
19 45:110.

20 Section 6. Postclosure Financial Assurance. The owner or operator of a special waste site or
21 facility subject to this ~~[the]~~ administrative regulation shall establish, in accordance with Section 4 of
22 this administrative regulation, financial assurance for postclosure care of the facility, in an amount
23 equal to the most recent postclosure cost estimate prepared in accordance with Section 3 of this

1 administrative regulation. The owner or operator shall provide continuous coverage for postclosure
2 until released from the financial assurance requirement pursuant to Section 4 of 401 KAR 45:100 or
3 Section 5 of 401 KAR 45:110.

4 Section 7. Performance Agreement [~~Bond~~].

5 (1) Before the cabinet shall issue a construction and operation [~~construction/operation~~]
6 permit, the owner or operator of a special waste site or facility that is required to post financial
7 assurance pursuant to this administrative regulation shall complete a performance agreement form
8 on "Performance Agreement" DWM 4650 [~~bond on Form DEP 7094E entitled "Performance Bond"~~
9 ~~(November 2016). The requirements contained in the performance bond are incorporated in this~~
10 ~~administrative regulation by reference. The performance bond may be obtained from the Division of~~
11 ~~Waste Management, 300 Sewer Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, between~~
12 ~~the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at~~
13 ~~eeec.ky.gov/environmental-protection/waste;~~]

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

16 (a) A surety bond which is executed by filling in the required information on the performance
17 bond form submitted in accordance with subsection (1) of this section and by submitting a copy of
18 the surety bond agreement to the cabinet;

19 (b) A letter of credit submitted on form [~~as set forth on Form DEP 7094F entitled~~]
20 "Irrevocable Letter of Credit" DWM 4670; or [~~(November 2016). The requirements contained in the~~
21 ~~irrevocable letter of credit are incorporated in this administrative regulation by reference. The~~
22 ~~irrevocable letter of credit may be obtained from the Division of Waste Management, 300 Sewer~~
23 ~~Boulevard, Frankfort, Kentucky, 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m.,~~

1 ~~Eastern Time, Monday through Friday, or from the Web site at [eec.ky.gov/environmental-](http://eec.ky.gov/environmental-protection/waste/)~~
2 ~~[protection/waste/](http://eec.ky.gov/environmental-protection/waste/)]~~

3 (c) An escrow agreement submitted on form ~~[as set forth on Form DEP 7094G entitled]~~
4 ~~"Escrow Agreement" DWM 4665 [(November 2016). The requirements contained in the escrow~~
5 ~~agreement are incorporated in this administrative regulation by reference. The escrow agreement~~
6 ~~may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort,~~
7 ~~Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday~~
8 ~~through Friday, or from the Web site at eec.ky.gov/environmental-protection/waste/]~~

9 ~~[(3) Other financial assurance as specified in Section 10 of this administrative regulation.]~~

10 Section 8. Release of Financial Assurance.

11 (1) Financial assurance posted to assure proper closure of a special waste landfarming or
12 composting facility shall be released in accordance with Section 4 of 401 KAR 45:100.

13 (2) Financial assurance posted to assure proper closure of a special waste landfill shall be
14 released in accordance with Section 5 of 401 KAR 45:110.

15 Section 9. Financial Assurance for Publicly Owned Facilities. The owner or operator of a
16 publicly owned facility shall provide a budget for the permitting, construction, operation, closure,
17 and postclosure care of the facility. The budget shall be revised and submitted annually. When
18 elements of the facility's permitting, construction, operation, closure, or postclosure care are to be
19 accomplished by contract or agreement, a copy of the contract or agreement shall be submitted to
20 the cabinet.

21 Section 10. Financial Assurance for Captive Facilities. The cabinet may accept other
22 satisfactory financial assurance as adequate financial responsibility for a special waste site or facility
23 which is exclusively owned and operated by a special waste generator on property owned by the

1 special waste generator for the purpose of accepting special waste exclusively from the special waste
2 generator.

3 Section 11. Incorporation by Reference.

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

5 (a) "Performance Agreement" form DWM 4650, (February 2019);


6 (b) "Irrevocable Letter of Credit" form DWM 4670; (February 2019); and

7 (c) "Escrow Agreement" form DWM 4665; (February 2019).

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

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

401 KAR 45:080 approved for filing.
Pages (1-6)


Rebecca Goodman, Secretary
Energy and Environment Cabinet


Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2023, at 5:30 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky 40601. The public hearing can also be accessed at the following website address <https://us02web.zoom.us/j/86146637051> or can be accessed toll free by telephone: 833-548-0282 using Meeting ID code: 861 4663 7051 and Passcode 139147. Please note that registration is required to participate in this hearing. You must either email your name and mailing address to Michael.Mullins@ky.gov or mail this information to Michael Mullins, Department for Environmental Protection, Office of the Commissioner, 300 Sower Boulevard, Frankfort, Kentucky 40601. Please put "Land Application of Biosolids" 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 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 is received 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 November 30, 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.

CONTACT PERSON: Michael Mullins, Env Scientist Consultant II, 300 Sower Blvd, Frankfort, Kentucky 40601, phone: (502) 782-6720, fax: (502) 564-4245, email: michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

401 KAR 45:080

Contact Person: Michael Mullins

Phone: (502) 782-6720

Email: michael.mullins@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the financial requirements for closure and postclosure of special waste sites or facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to require financial coverage for the closure and postclosure of a special waste site or facility.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes provides the department the authority to promulgate administrative regulations and administer special waste programs. This administrative regulation establishes financial assurance requirements for special waste sites and facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by providing the regulated community information on financial assurance for the closure and postclosure requirements associated with special waste sites and facilities.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies that there is no financial assurance required for the management of biosolids. The amendments make other corrections to comply with the drafting requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to correctly direct interested individuals to 401 KAR 45:105 where information for biosolid permits can be found and to clarify the financial assurance requirements related to other types of special waste permits do not apply to biosolid permits.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by establishing a formal permitting process for biosolids as required by KRS 224.50-765. This amendment clarifies that biosolid permits do not require financial assurance.

(d) How the amendment will assist in the effective administration of the statutes: This amendment clarifies that financial assurance for the closure and postclosure of a special waste site or facility is not required for the management of biosolids.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The total universe of potential impacted entities is 399. 394 of those are wastewater treatment plants that either already have a permit (54) or could get a permit in the future (340). The remaining 5 are private entities (contractors) that already have permits.

(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: The amendment clarifies that public notice is not part of the permitting process. The regulated entities will need to refer to 401 KAR 45:105 to find information on the permitting of biosolids.

(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 additional cost to the regulated entity to comply with this amendment. The same application fee will apply to the current process and the costs of complying with 401 KAR 45:105 will be either the same or less than the current process.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will benefit by having all of the information related to biosolid management in the new administrative regulation (401 KAR 45:105).

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

(a) Initially: There will not be a cost to the agency to implement this amendment

(b) On a continuing basis: There will not be a cost to the agency to implement this amendment on a continuing basis

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding source for this program will be a mix of restricted funds from the fees charged for application review and general funds.

(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 will not be a need to increase fees or funding associated with this amendment. The agency currently regulates wastewater treatment plant sludges and will simply use the current personnel and funding to implement the new process in 401 KAR 45:105.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are not any new fees associated with this administrative regulation or the amendment. The current fee that is charged for application review (401 KAR 45:250) will continue to be applied to biosolid applications under this new process.

(9) TIERING: Is tiering applied? (Explain why or why not) No. All entities that submit an application for a biosolids permit will be reviewed in accordance with the application information submitted and will not be treated differently.

FISCAL NOTE

401 KAR 45:080

Contact Person: Michael Mullins

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(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 not only the Department for Environmental Protection's Division of Waste Management but also local governments that have wastewater treatment plants that generate sludge.

(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, 224.40-305, 224.40-330, 224.50-760, 224.50-765.

(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 any additional revenue. The current application fees (401 KAR 45:250) will continue after these amendments are effective.

(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 any additional revenue. The current application fees will continue after these amendments are effective and will be applied to the biosolids application.

(c) How much will it cost to administer this program for the first year? There should not be an additional cost associated with implementation of these amendments. The Cabinet will use the same personnel and equipment to review permits under the current structure and the new biosolids permitting process.

(d) How much will it cost to administer this program for subsequent years? There should not be an additional cost associated with implementation of these amendments.

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

Revenues (+/-): There are no anticipated increases in revenues related to these amendments.

Expenditures (+/-): There are no anticipated increases in expenditures related to these amendments.

Other Explanation: The new process related to the implementation of SB 213 from the 2023 Legislative Session changed the process but didn't change any of the fees associated with the management of biosolids.

(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 Cabinet does not anticipate there to be a significant cost savings to the regulated entity with the implementation of these amendments.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The Cabinet does not anticipate there to be a significant cost savings to the regulated entity with the implementation of these amendments.

(c) How much will it cost the regulated entities for the first year? The addition of language clarifying that public notice does not apply to the permitting of the land application of biosolids will not result in a cost increase for the regulated entity. The current process of land applying type B wastewater treatment sludges does not require public notice either. Therefore, no saving will be realized

(d) How much will it cost the regulated entities for subsequent years? The addition of clarifying language stated in (c) will not result in a cost increase for the regulated entity.

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 not a predicted change in costs with this proposal.

Expenditures (+/-): There is not expected to be a change in expenditures with this proposal.

Other Explanation: The amendment to this administrative regulation is simply a statement clarifying that this regulation does not apply to the land application of biosolids. Those processes are established in 401 KAR 45:105. Therefore, there is not an anticipated impact to costs or revenues with this amendment.

(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 proposal will not have a major economic impact as defined KRS 13A.010(13).

SUMMARY OF MATERIAL INCORPORATED BY REFERENCE

- I. The "Performance Agreement", Form DEP 4650, February 2019, this form is required to be submitted to the cabinet by owners or operators that are applying for a special waste permit. This form replaces the performance bond form, DEP 7094E, previously incorporated by reference. This form consist of 2 pages.
- II. The "Escrow Agreement", form DEP 4665, February 2019, is an option that can be submitted with form DEP 4650 to the cabinet by owners or operators that are applying for a special waste permit. This form replaces the performance bond form, DEP 7094G, previously incorporated by reference. This form consist of 5 pages.
- III. "Irrevocable Line of Credit", form DEP 4670, February 2019, is an option that can be submitted with form DEP 4650 to the cabinet by owners or operators that are applying for a special waste permit. This form replaces the performance bond form, DEP 7094F, previously incorporated by reference. This form consist of 3 pages.

SUMMARY OF CHANGES TO MATERIAL INCORPORATED BY REFERENCE

- I. This is a new form related to financial assurance for special waste sites and facilities. Therefore, there are no changes to the form.
- II. This is a new form related to financial assurance for special waste sites and facilities. Therefore, there are no changes to the form.
- III. This is a new form related to financial assurance for special waste sites and facilities. Therefore, there are no changes to the form.

