

1 ENERGY AND ENVIRONMENT CABINET

2 Department Of Environmental Protection

3 Division Of Waste Management

4 (Amended After Comments)

5 401 KAR 47:110. Registered permit-by-rule.

6 RELATES TO: KRS 224.01-010, 224.10-100, 224.10-105, 224.40-100, 224.40-110, 224.40-120,  
7 224.40-305, 24.40-310, 224.40-315, 224.40-320, 224.40-325, 224.40-330, 224.40-340, 224.40-  
8 605, 224.40-650, 224.43-010, 224.43-020, 224.43-070, 224.43-310, 224.43-315, 224.43-330,  
9 224.43-340, 224.43-345, 224.43-350, 224.70-100, 224.70-110, 224.99-010, 224.99-020

10 STATUTORY AUTHORITY: KRS 224.10-100(19)(c) and[;] (24), 224.40-100, 224.40-305

11 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(19)(c) and[;] (24), and  
12 224.40-305 authorize the cabinet to promulgate administrative regulations for the management,  
13 processing, and disposal of wastes. KRS 224.40-305 requires that persons engaging in the  
14 management, processing, and disposal of waste obtain a permit. This administrative regulation  
15 establishes requirements for registered permits-by-rule and the standards for the certification  
16 program.

17 Section 1. Issuance of Registered Permit-by-rule.

18 (1) Before accepting waste, the owner or operator of a solid waste site or facility  
19 established[~~specified~~] in 401 KAR 47:080, Section 2(6) shall notify the cabinet by submitting a  
20 registration. [~~For solid waste sites or facilities other than medical waste transfer stations,~~]The  
21 registration shall become effective thirty (30) calendar[~~five (5) business~~] days after the cabinet

1 receives it unless the cabinet approves or denies the registration within that time. A registration  
2 shall be denied if the registration is incomplete or the registration fails to demonstrate compliance  
3 with the requirements established in 401 KAR 47:120 and 401 KAR 48:320|401-KAR  
4 Chapters 47 and 48.~~[For medical waste transfer stations, the registration shall become effective~~  
5 ~~thirty (30) days after the cabinet receives it unless the cabinet denies the registration within that~~  
6 ~~time.]~~ The cabinet shall hold a public hearing in accordance with 401 KAR 47:140, Section 10,  
7 prior to accepting or denying the registration upon the request of any individual. The owner or  
8 operator of a registered permit-by-rule facility shall comply with the environmental performance  
9 standards in 401 KAR 30:031 in order for the registered permit-by-rule to remain effective.

10 (2) The registration for a registered permit-by-rule facility shall be submitted to the cabinet on  
11 one (1) of the following registration forms:

- 12 (a) DEP 7059; Solid Waste Transfer Station, Convenience Center, and Recycling Center;
- 13 (b) DEP 7059-A; Solid Waste Composting Facility;
- 14 (c) DEP 7059-E; Class I Solid Waste Landfarm;
- 15 (d) DEP 7059-H; Less-than-one-acre Construction/Demolition Debris (CDD) Landfill; or
- 16 (e) DEP 7059-J; Solid Waste Incinerator.

17 (3) ~~[A registration that is determined to be administratively incomplete may be denied within five~~  
18 ~~(5) business days after receiving the registration. Thereafter,]~~ If the cabinet determines that a  
19 registration that is not approved or denied pursuant to subsection 1 of this section fails to include  
20 all of the information required, the cabinet shall notify the operator that the registration is  
21 deficient. The owner or operator shall submit the requested information within thirty (30)  
22 calendar days of the date of the notice of deficiency. The cabinet shall review the

1 ~~registration~~~~[cabinet's review shall be conducted]~~ in accordance with the requirements of 401  
2 KAR 47:025.

3 (4) Prior to submission of the registration, the owner or operator shall prepare a groundwater  
4 protection plan in accordance with 401 KAR 5:037.

5 (5) The owner or operator shall publish a notice two (2) weeks prior to submission of the  
6 registration in a daily or weekly newspaper of general circulation where the proposed facility is  
7 located. Public notices shall be of a size to include not less than two (2) column widths for  
8 advertising and shall be in a display format. The public notice shall contain ~~the following~~:

9 (a) Name and address of the owner or operator;

10 (b) The type of facility;

11 (c) A brief description of the business to be conducted; and

12 (d) Name and address of the facility.

13 Section 2. Operating Requirements for Registered Permit-by-rule Facilities.

14 (1) The owner or operator of a facility operating under a registered permit-by-rule, except as  
15 ~~established~~~~[provided]~~ in Section 3 of this administrative regulation, shall not:

16 (a) Store, treat, or dispose of solid waste not specified in the registration; or

17 (b) Exceed the design capacities specified in the registration.

18 (2) The owner or operator of a facility operating under a registered permit-by-rule shall comply  
19 with the environmental performance standards in 401 KAR 30:031.

20 (3) The owner or operator of a registered permit-by-rule facility shall keep records as  
21 ~~established~~~~[provided]~~ in this section.

22 (a) The owner or operator of a less-than-one (1) acre or expanded less-than-two (2) acre  
23 construction ~~or~~ ~~[/]~~demolition debris landfill or solid waste incinerator shall report quarterly

1 pursuant to KRS 224.43-330. In addition, the owner or operator shall submit DEP 7046, Annual  
2 Waste Quantity Report, to the cabinet annually and upon closure of the facility.

3 (b) The owner or operator of a composting facility shall report quarterly pursuant to KRS  
4 224.43-330. In addition, the owner or operator shall submit DEP 7108, Annual Report for a  
5 Solid Waste Composting Facility, to the cabinet annually and upon closure of the facility.

6 (c) The owner or operator of a landfarming facility shall report quarterly pursuant to KRS  
7 224.43-330. In addition, the owner or operator shall submit DEP 7064, Annual Report for a  
8 Class I Solid Waste Landfarm, to the cabinet annually and upon closure of the facility.

9 (d) The owner or operator of a registered permit-by-rule convenience center, transfer station or  
10 commercial recycling center shall document records on DEP 7046, Annual Waste Quantity  
11 Report. Records shall be kept on site and available for inspection for at least three (3) years.

12 (4) The owner or operator of a solid waste incinerator shall conduct the Toxicity Characteristic  
13 Leaching Procedure (TCLP) test established~~[described]~~ in 401 KAR 39:060, Section 2~~[401~~  
14 ~~KAR 31:030, Section 5]~~, before the initial disposal of any ash and if~~[whenever]~~ the  
15 characteristics of the waste accepted by the incinerator significantly change. The owner or  
16 operator shall keep a record of the current TCLP laboratory analysis report required by this  
17 section available for inspection by the cabinet for at least three (3) years. The owner or operator  
18 of a solid waste incinerator shall report the volume of ash generated to the cabinet annually and  
19 upon closure of the facility. The report shall be submitted no later than January 31 for the  
20 preceding calendar year.

21 Section 3. Changes to a Registered Permit-by-rule.

22 (1) A revised registration shall be submitted as established in paragraphs (a) through (c) of this  
23 subsection~~[follows]~~:

1 (a) Solid wastes not previously identified in the registration may be stored, treated, or disposed  
2 at a facility operating under a registered permit-by-rule if the owner or operator submits a  
3 revised registration to the cabinet prior to that change.

4 (b) The owner or operator of a facility operating under a registered permit-by-rule shall submit  
5 a revised registration to the cabinet prior to increasing the design capacity of processes used at  
6 a facility.

7 (c) The owner or operator of a facility operating under a registered permit-by-rule shall submit  
8 a revised registration to the cabinet prior to changing the processes for the storage, treatment,  
9 or disposal of solid waste, using additional processes, or changing the owner or operator.

10 (2) The revised registration shall become effective thirty (30) calendar~~[five (5) business]~~ days  
11 after the cabinet receives it, unless the cabinet approves or denies the registration within that  
12 time. The cabinet shall review the registration in accordance with Section 1 of this administrative  
13 regulation.

14 Section 4. Revocation of a Registered Permit by Rule. The cabinet may revoke a registered permit-  
15 by-rule for the following causes:

16 (1) Noncompliance by the owner or operator with a condition of the registration;

17 (2) The owner, operator, or key personnel fail~~[owners, operator's, or key personnel's failure~~  
18 ~~during the registration process]~~ to disclose all information required by the cabinet during the  
19 registration process;

20 (3) The owner, operator, or key personnel misrepresent~~[owner's, operator's, or key personnel's~~  
21 ~~misrepresentation of]~~ any information required by the cabinet at any time;

22 (4) The cabinet determines~~[cabinet's determination]~~ that the operation endangers human health,  
23 safety, or the environment;

1 (5) The ~~owner, operator, or key personnel violate~~[owner's, operator's or key personnel's violation  
2 of] any requirement of KRS Chapter 224 or 401 KAR Chapters 30 through 49[~~the administrative~~  
3 ~~regulations promulgated pursuant thereto~~]; or

4 (6) A change to the registered-permit-by-rule that was made without complying with Section 3  
5 of this administrative regulation.

6 Section 5. Incorporation by Reference.

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

8 (a) DEP 7059; "Solid Waste Transfer Station, Convenience Center, and Recycling Center",  
9 November 2016;

10 (b) DEP 7059-A; "Solid Waste Composting Facility", November 2016;

11 (c) DEP 7059-E; "Class I Solid Waste Landfarm", November 2016;

12 (d) DEP 7059-H; "Less-than-one-acre Construction/Demolition Debris", July 2024[~~November~~  
13 ~~2016~~];

14 (e) DEP 7059-J; "Solid Waste Incinerator", November 2016;

15 (f) DEP 7064; "Annual Report for a Class I Solid Waste Landfarm", November 2016;

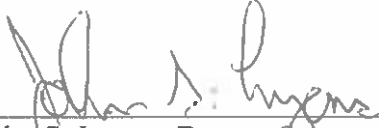
16 (g) DEP 7108; "Annual Report for a Solid Waste Composting Facility", November 2016; and

17 (h) DEP 7046; "Annual Waste Quantity Report", November 2016.

18 (2) This material may be inspected, copied, or obtained at the Division of Waste Management,  
19 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.,  
20 or at any of the division's field offices Monday through Friday, 8 a.m. to 4:30 p.m.; 2642  
21 Russellville[~~Russelville~~] Road, Bowling Green, Kentucky 42101; 2751 Campbellsville Road,  
22 Columbia, Kentucky 42728; 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky  
23 41042; 1332 State Highway 15, Hazard, Kentucky 41701; 875 South Main Street, London,

1 Kentucky 40741; 9116 Leesgate Road, Louisville, Kentucky 40222-4925; Madisonville State  
2 Office Building, 625 Hospital Drive, Madisonville, Kentucky 42431; 525 Hecks Plaza Drive,  
3 Morehead, Kentucky 40351; 130 Eagle Nest Drive, Paducah, Kentucky 42003.  
4 (3) This material is also available at the division Web site at [ccc.ky.gov/environmental-](http://ccc.ky.gov/environmental-)  
5 [protection/waste](http://ccc.ky.gov/environmental-protection/waste).

401 KAR 47:110. Registered permit-by-rule is approved for filing.



---

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

1/14/25  
Date



Statement of Consideration  
Relating to 401 KAR 47:110

Energy and Environment Cabinet, Department for Environmental Protection, Division of Waste Management  
(Amended After Comments)

I. The public hearing on 401 KAR 47:110, scheduled to be held virtually on November 21, 2024, at 10:00 a.m., was cancelled; however, written comments were received during the public comment period.

II. The following people submitted written comments:

<u>Name and Title</u>	<u>Agency/Organization/Entity/Other</u>
Tom Fitzgerald	Kentucky Resource Council
Tyler Shields	Division of Waste Management

III. The following people from the promulgating administrative body responded to the written comments:

<u>Name and Title</u>	<u>Agency/Organization/Entity/Other</u>
Tyler Shields, Environmental Control Supervisor	Division of Waste Management

IV. Summary of Comments and Responses

(1) Subject Matter: Cabinet authority for “registered permit-by-rule”

(a) Comment: Tom Fitzgerald – There is no authority in KRS Chapter 224 that allows for an abbreviated “registered permit-by-rule” for issuance of less than one-acre or less than two-acre construction or demolition debris (CDD) landfills.

(b) Response: KRS 224.40-305 authorizes the cabinet to require a person to obtain a permit from the cabinet to establish, construct, operate, maintain, or permit the use of a waste site or facility. Pursuant to 401 KAR 47:005, under the statutory authority of KRS 224.10-100, the cabinet defines the term “permit” to include a registered permit-by-rule. Pursuant to 401 KAR 47:080, under the statutory authority of KRS 224.10-100 and KRS 224.40-305, less than one-acre construction or demolition debris landfills are categorized as a solid waste site or facility that operates under a registered permit-by-rule.

- (2) Subject Matter: Registered permit-by-rule failing to be a permit application.
- (a) Comment: Tom Fitzgerald – KRS 224.40-120 establishes minimum standards for permitting “off-site” CDD landfills but does not require or authorize the Cabinet to review or approve either a less than one-acre CDD landfill, or to expand it to less than two-acres, under a “registration” process that fails to require a permit application containing sufficient information to allow a reasoned determination of compliance with applicable environmental standards.
  - (b) Response: KRS 224.40-120 authorizes the cabinet to permit the off-site disposal of construction or demolition waste at a site initially no larger than one (1) acre. Pursuant to 401 KAR 47:005, under the statutory authority of KRS 224.10-100, the cabinet defines the term “permit” to include a registered permit-by-rule. Additionally, the term “registered permit-by-rule” is defined for certain classes of solid waste sites or facilities as specified in 401 KAR 47:080 have a permit as provided in 401 KAR 47:110.
- (3) Subject Matter: Elimination of the term “registration” and utilize a permit application.
- (a) Comment: Tom Fitzgerald – 401 KAR 47:110 should be revised to eliminate the use of a “registration” for any waste disposal activities purported to be authorized in that regulation, including less than one (or two) acre CDD landfills, and to instead require a permit be applied for to engage in any waste disposal activities.
  - (b) Response: The cabinet acknowledges this comment. The term “registration” is widely accepted as a form of an application in many practices. The registration form incorporated by reference requires sufficient information, including 25 attachments.
- (4) Subject Matter: Technical basis for registered permit-by-rule utilization.
- (a) Comment: Tom Fitzgerald – On what technical basis, including any published literature or data collected by or for the Cabinet, does the Cabinet justify the decision not to require less than one-acre (and potentially less than two-acre) CDD landfills to engage in the same permit review, to provide the same information, and to adhere to the same design, construction, and operation standards as a CDD landfill of 1+ or 2+ acres.
  - (b) Response: KRS 224.40-120 authorizes the cabinet to permit the off-site disposal of construction or demolition waste at a site initially no larger than one (1) acre if the minimum conditions defined in statute are met. This administrative regulation, in conjunction with 401 KAR 48:320, imposes additional requirements for less than one-acre (and less than two-acre) construction or demolition debris landfills.
- (5) Subject Matter: Clarity of what demonstrates compliance with the requirements established in 401 KAR Chapters 47 and 48.
- (a) Comment: Tom Fitzgerald – The proposed amendment must clarify what must be done to “demonstrate compliance with the requirements established in 401 KAR Chapters 47 and 48.” Does the Cabinet intend that a registrant

demonstrate that it will meet all of the technical standards of 401 KAR Chapter 48 that are applicable to CDD landfills? Does the Cabinet intend that the registrant be required to demonstrate compliance with 401 KAR 47:030 during the “registration” process?

(b) Response: The cabinet acknowledges this comment. The regulation is being amended to specifically cite the applicable technical standards in 401 KAR 47:120 and 48:320.

(6) Subject Matter: Reference for 401 KAR 47:030.

(a) Comment: Tom Fitzgerald – The lack of reference in 401 KAR 47:110 to the standards of 401 KAR 47:030 is of concern. While 401 KAR 30:031 establishes the environmental performance standards generally applicable to all waste sites and facilities, 401 KAR 47:030 establishes the minimum environmental standards “which with all solid waste sites or facilities shall comply.”

(b) Response: The cabinet acknowledges this comment. Pursuant to the amendments made in response to another comment, the regulation is being amended to specifically cite the applicable standards in 401 KAR 47:120 and 48:320, which also address this comment.

(7) Subject Matter: Regulation includes language referencing a repealed regulation 401 KAR 31:030.

(a) Comment: Tyler Shields – The commentor requests a substitution for a citation referencing a repealed regulation, 401 KAR 31:030.

(b) Response: The cabinet acknowledges this comment and will amend the citation to reference 401 KAR 39:060, Section 2.

#### V. Summary of Statement of Consideration and Action Taken by Promulgating Administrative Body

The public hearing on this administrative regulation was cancelled; however, written comments were received. The Division of Waste Management responded to the comments and amends the administrative regulation as follows:

Page 2  
Section 1(1)  
Line 3

After “with the requirements established in”, insert the following:

**401 KAR 47:120 and 401 KAR 48:320.**

Delete “401 KAR Chapters 47 and 48”.

Page 4  
Section 2(4)  
Line 13

After “Leaching Procedure (TCLP) test established in”, insert the following:

**401 KAR 39:060, Section 2**

Delete "401 KAR 31:030, Section 5".