

Statement of Consideration  
Relating to 401 KAR 48:320

Energy and Environment Cabinet, Department for Environmental Protection, Division of Waste Management  
(Not Amended After Comments)

I. The public hearing on 401 KAR 48:320, 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: Authority of the Cabinet to exempt technical standards of 401 KAR Chapter 48 for less than one-acre (or less than two acre) CDD landfills.

(a) Comment: Tom Fitzgerald – By what authority the Cabinet exempts CDD landfills of less than one acre (or less than two acres) from the technical standards of 401 KAR Chapter 48.

(b) Response: The cabinet acknowledges this comment. This administrative regulation establishes the technical requirements for less than one-acre (or less than two-acre) construction or demolition debris landfills, under the statutory authority of KRS 224.10-100(19)(c), 224.40-100, 224.40-120, 224.40-305, 224.40-330, and 224.40-605.

(2) Subject Matter: Liner and leachate collection system requirement.

(a) Comment: Tom Fitzgerald – The limitation of the liner and leachate collection system requirements to those CDD landfills located within a “wellhead protection

area” should be eliminated, since the liner and leachate collection systems required of all other CDD landfills by 401 KAR 48:060 should be equally applicable to less than one/two-acre off-site CDD landfills, (and to on-site CDD landfills).

(b) Response: The cabinet acknowledges this comment, which addresses a portion of the regulation that is not being amended during this administrative regulation package. For the type of inert material normally disposed of in a less than one-acre (or less than two-acre) construction or demolition debris landfill, the additional cost associated with a liner and leachate system would not be justified. The associated costs are well justified in a wellhead protection area. The proposed amendments to the current regulation are sufficient to protect human health, safety and the environment.

(3) Subject Matter: Scientific and technical basis for not requiring 401 KAR 48:060 technical standards for less than one-acre (or less than two-acre) CDD landfills.

(a) Comment: Tom Fitzgerald – The Cabinet is requested to provide specific affirmative consideration to, and to explain in detail, the scientific and technical basis for the decision to forego imposition of the 401 KAR 48:060 technical standards on CDD landfills of less than one-acre (or two-acre or less in some cases).

(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 imposes additional requirements for less than one-acre (and less than two-acre) construction or demolition debris landfills.

(4) Subject Matter: Grace period for existing permittees to comply with interim cover requirements.

(a) Comment: Tyler Shields – The commentor requested that the cabinet offer a six (6) to twelve (12) month grace period for existing permittees to comply with the interim cover requirements.

(b) Response: The cabinet acknowledges this comment. The cabinet can implement compliance with the requirements under the discretion of the enforcing agency.

#### 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 will not be amending the administrative regulation.

1 ENERGY AND ENVIRONMENT CABINET

2 Department Of Environmental Protection

3 Division Of Waste Management

4 (Not Amended After Comments)

5 401 KAR 48:320. Operating requirements for less than one (1) acre or expanded less than two (2)

6 acre construction or [/]demolition debris landfills.

7 RELATES TO: KRS 224.01-010, 224.10-100, 224.10-105, 224.40-100, 224.40-110, 224.40-120,

8 224.40-305, 224.40-310, 224.40-315, 224.40-320, 224.40-325, 224.40-330, 224.40-340, 224.40-

9 605, 224.40-650, 224.43-010, 224.43-020, 224.43-070, 224.43-310, 224.43-315, 224.43-330,

10 224.43-340, 224.43-345, 224.43-350, 224.70-100, 224.70-110, 224.99-010, 224.99-020

11 STATUTORY AUTHORITY: KRS 224.10-100(19)(c) and[;] (24), 224.40-100, 224.40-120,

12 224.40-305, 224.40-330, 224.40-605

13 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(19)(c) and[;] (24), 224.40-

14 120, 224.40-305, 224.40-330, and 224.40-605 authorize the cabinet to promulgate administrative

15 regulations for the management, processing, and disposal of wastes. KRS 224.40-305 requires that

16 persons engaging in the management, processing, and disposal of waste obtain a permit. This

17 administrative regulation establishes the technical requirements for less than one (1) acre or

18 expanded less than two (2) acre construction or [/]demolition debris landfills.

19 Section 1. Applicability. This administration regulation shall apply[applies] to owners and

20 operators of less than one (1) acre or expanded less than two (2) acre construction or

1 [X]demolition debris landfills. The owner or operator of a less than one (1) acre or expanded less  
2 than two (2) acre construction or [X]demolition debris landfill shall operate the facility in  
3 accordance with the requirements of this administrative regulation.

4 Section 2. Requirement to Obtain a Registered Permit-by-rule. The owner or operator of a less  
5 than one (1) acre or expanded less than two (2) acre construction or [X]demolition debris landfill  
6 shall not begin construction or accept waste until the registered permit-by-rule for the facility has  
7 become effective as established[specified] in 401 KAR 47:110.

8 Section 3. Construction Requirements. The owner or operator of a less than one (1) acre or  
9 expanded less than two (2) acre construction or [X]demolition debris landfill located inside a  
10 wellhead protection area, as defined by[in] 401 KAR 5:002, Section 1, shall construct and maintain  
11 a liner and leachate collection system.

12 (1) The liner shall:

13 (a) Be constructed of soil:

14 1. With a minimum thickness of twelve (12) inches; and

15 2. That includes a low permeability soil component with a minimum of twelve (12) contiguous  
16 inches of  $1 \times 10^{-7}$  centimeters per second maximum permeable material, or its equivalent; and

17 (b) Cover the bottom and sidewalls of the facility, with the bottom liner sloped toward a leachate  
18 collection system that complies with subsection (3) of this section.

19 (2) A professional engineer, licensed in Kentucky pursuant to KRS 322.040, shall  
20 supervise[oversee] the design and installation of the liner, including moisture and density tests,  
21 and shall certify that the liner meets the compaction requirements. The certification shall be  
22 submitted to the cabinet within ten (10) days of completion of the liner.

1 (3) The leachate collection system shall:

2 (a) Have a minimum of a twelve (12) inch layer of gravel, or a layer of equivalent performance,  
3 and a toe-drain; and

4 (b) Be discharged into a collection tank with a minimum capacity of 1000 gallons.

5 (4) A professional engineer licensed in Kentucky, pursuant to KRS 322.040, shall  
6 supervise~~oversee~~ the design and installation of the leachate collection system, and shall certify  
7 that the collection tank meets the capacity requirement. The certification shall be submitted to  
8 the cabinet within ten (10) days of completion of the liner.

9 Section 4. Operating Requirements.

10 (1) The owner or operator of a less than one (1) acre or expanded less than two (2) acre  
11 construction or ~~[/]~~demolition debris landfill shall comply with~~[-the following operating~~  
12 ~~requirements]~~:

13 (a) The environmental performance standards of 401 KAR 30:031;

14 (b) The siting requirements of 401 KAR 48:050, Sections 1 through~~[-2, and]~~ 3;

15 (c) The liner and a leachate collection system as established~~specified~~ in Section 3 of this  
16 administrative regulation, if the landfill is to be located in a wellhead protection area;

17 (d) The groundwater protection plan requirements of 401 KAR 5:037;

18 (e) The requirements of KRS 224.40-120;

19 (f) The operator certification requirements established pursuant to KRS 224.40-605; and

20 (g) The annual report requirement of 401 KAR 47:110, Section 2(3).

21 (2) The owner or operator of a less than one (1) acre or expanded less than two (2) acre  
22 construction or ~~[/]~~demolition debris landfill shall:

- 1 (a) Dispose only of construction or [~~/~~]demolition waste or construction material as defined  
2 by[~~in~~] 401 KAR 48:005, Section 1(18);
- 3 (b) Not dispose of electrical fixtures containing hazardous liquids, such as fluorescent light  
4 ballasts or transformers;
- 5 (c) Properly dispose of any non-construction or [~~/~~]demolition debris landfill waste at a properly  
6 permitted disposal facility;
- 7 (d) During operation clearly delineate the horizontal boundary with slats, stakes, or other types  
8 of easily identifiable permanent markers to show that the constructed boundary is within the  
9 permitted boundary;
- 10 (e) Install silt fencing, hay bales, or other appropriate best management practices to prevent  
11 sediment from leaving any area disturbed by construction, including stockpiled soil and borrow  
12 pit areas. The sediment controls shall be kept in good operating order;
- 13 (f) Only accept waste from sources listed in the registration and approved by the cabinet. Wastes  
14 may be added by submitting a revised registration pursuant to 401 KAR 47:110, Section 3(3);
- 15 (g) Place the waste in layers, two (2) feet thick or smaller, and compact each layer thereafter;
- 16 (h) Cover each ten (10) foot lift with a minimum of six (6) inches compacted soil;
- 17 (i) Maintain a buffer zone of 750 yards from any other less than one (1) acre or expanded less  
18 than two (2) acre construction or [~~/~~]demolition debris landfill permitted boundary;
- 19 (j) Remove landfill debris, mud and waste from off-site roadways;[~~and~~]
- 20 (k) Limit the[~~The~~] maximum capacity of a less than one (1) acre construction or[~~and~~]  
21 demolition debris landfill [~~shall~~] not to exceed 40,000 cubic yards of waste; and[~~-~~]

1 (1) Limit the maximum capacity of a less than one (1) acre construction or demolition debris  
2 landfill that has been expanded to a less than two (2) acre construction or demolition debris  
3 landfill not to exceed a total combined volume of 110,000 cubic yards of waste.

4 (3) Interim cover period. The owner or operator:

5 (a) Shall place interim soil cover in a manner to eliminate protruding waste over an area  
6 that will not receive at least twelve (12) cubic yards of waste within ninety (90) calendar  
7 days of the last waste placement;

8 (b) Shall not have more than one (1) acre of exposed waste at any given time;

9 (c) Shall not remove the interim cover until the day of waste placement;

10 (d) Shall place, compact, and grade the interim cover to promote positive drainage; and

11 (e) Shall apply temporary erosion controls at the time of placing interim cover.

12 Section 5. Closure Requirements. The owner or operator of a less than one (1) acre or expanded  
13 less than two (2) acre construction or [^]demolition debris landfill shall close the facility as  
14 established in the section.[follows:]

15 (1) The landfill shall be covered with a soil cap, two (2) feet thick, and the entire disturbed area  
16 shall be vegetated within thirty (30) days of ceasing to accept waste. The cabinet may approve  
17 an alternative cover of equivalent performance proposed by the owner or operator.

18 (a) The vegetation shall consist of:

19 1. A minimum of two (2) legumes;

20 2. One (1) annual grass; and

21 3. One (1) perennial grass, in sufficient poundage to provide at least ninety (90) percent ground  
22 coverage for the disturbed area.

1 (b) The grass seed shall be covered with at least one and one-half (1.5) tons of straw mulch or  
2 an alternative that delivers equivalent performance per acre.

3 (c) The straw mulch or its alternative shall be stabilized with netting on slopes that exceed  
4 fifteen (15) percent.

5 (d) The final cap shall have a slope of between five (5) percent and twenty-five (25) percent  
6 upon completion of the final grading.

7 (2) The owner or operator of a less than one (1) acre or expanded less than two (2) acre  
8 construction or [X]demolition debris landfill shall record a notice, with the property deed, on  
9 which the less than one (1) acre or expanded less than two (2) acre construction or [X]demolition  
10 debris landfill is located. The notice shall notify, in perpetuity, any potential purchaser of the  
11 property of the landfill's location and dates of operation, the nature of the waste disposed, and  
12 impose a restriction against any disturbance of the cap. The notice shall be recorded in accordance  
13 with KRS Chapter 382 and proof of recording shall be submitted to the cabinet prior to the  
14 cabinet's approval of closure.

15 (3) The owner or operator of a less than one (1) acre or expanded less than two (2) acre  
16 construction or [X]demolition debris landfill shall, upon completion of closure of the facility,  
17 contact the cabinet for a closure inspection and release of the bond, described in 401 KAR 48:310.

18 (4) Closure shall be completed no later than thirty (30) days after final[~~last~~] receipt of waste.

19 Section 6. Corrective Action Requirements. If the cabinet determines that a threat to human  
20 health, safety, or the environment exists, the owner or operator of a less than one (1) acre or  
21 expanded less than two (2) acre construction or [X]demolition debris landfill shall conduct  
22 corrective action in accordance with 401 KAR 48:300, Section 8. The owner or operator shall

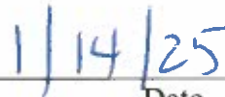


- 1 certify to the cabinet that corrective action has been completed in accordance with this section.
- 2 The cabinet shall determine that corrective action has been completed before releasing the bond.

401 KAR 48:320. Operating requirements for less than one (1) acre or expanded less than two (2) acre construction or demolition debris landfills is approved for filing.



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



Date