

SUGGESTED SUBSTITUTE

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ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management

401 KAR 45:050. Public information procedures for special waste site or facility permits.

RELATES TO: KRS ~~224.1~~[224.04], 224.10, 224.40, 224.46, 224.50, ~~224.999~~[224.90]

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760(1)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS ~~224.50-760(1)(d)~~ *authorizes*[Chapter 224 requires] the cabinet to *promulgate*[*adopt*] administrative regulations for the management, processing, and disposal of wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain, or *allow*[*permit*] the use of a waste site or facility to obtain a permit. [~~This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities.~~] This administrative regulation *establishes*[~~sets forth~~] public information procedures. This administrative regulation does not establish the public information procedures for biosolids from the treatment of domestic sewage or sewage sludge from a treatment facility.

Section 1. Applicability.

(1) Public information procedures shall apply to applicants for[~~the following permits~~][each person seeking]:

- (a) A new special waste landfill permit;
- (b) A *permit for a* horizontal expansion of a special waste landfill;
- (c) A Type A special waste landfarming or composting site or facility permit;
- (d) A research, development, and demonstration permit;
- (e) A transfer of ownership of a site facility with a formal special waste permit that originally required a public notice; and
- (f) Approval of a new waste *permit* that contains different chemical characteristics than the waste source previously permitted.

(2) The cabinet may require public information procedures for other permit actions or modifications if [~~it determines that~~] a significant degree of public interest exists with respect to an application or modification.

Section 2. Fact Sheet.

(1) A fact sheet shall be prepared by the cabinet for every draft permit. The fact sheet shall briefly state[~~set forth~~] the principal facts and the significant factual, legal, methodological, and policy questions considered in processing the permit application. [~~The cabinet shall send this fact sheet to the applicant and, on request, to any other person.~~]

(2) The fact sheet shall include:

- (a) A brief description of the type of facility or activity that is the subject of the draft permit;
- (b) The type and quantity of wastes that are proposed to be or are being stored, treated, or disposed;
- (c) A brief summary of the basis for the proposed permit conditions, including reference to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by Section 3 of this administrative regulation;

- (d) Reasons why any requested variances or alternatives to required standards do or do not appear justified;
- (e) A description of the procedures for reaching a final decision on the draft permit including:
 - 1. The beginning and ending dates of the comment period under Section 5 of this administrative regulation and the address where comments shall be received;
 - 2. Procedures for requesting a hearing and the nature of that hearing; and
 - 3. Any other procedures including public participation in the final decision; and
- (f) Name and telephone number of a cabinet representative to contact for additional information.

Section 3. Administrative Record for Proposed Permits.

- (1) The provisions of a draft permit prepared by the cabinet under ~~[Section 9]~~ of 401 KAR 45:030, **Section 9**, shall be based on the administrative record.
- (2) The administrative record shall consist of:
 - (a) The application and any supporting data **submitted** furnished by the applicant;
 - (b) The draft permit or notice of intent to deny the application;
 - (c) The fact sheet prepared in accordance with Section 2 of this administrative regulation;
 - (d) All documents cited in the fact sheet; and
 - (e) Other documents contained in the supporting file for the proposed permit.
- (3) Material readily available at the cabinet's office need not be physically included with the rest of the record **if [as long as]** it is specifically referred to in the fact sheet, **including [This includes]** published material that is generally available **[i]** and that is included in the administrative record.

Section 4. Public Notice.

- (1)
 - (a) Upon notification by the cabinet that the application is complete, the permit applicant shall publish a public notice, supplied by the cabinet, in a daily or weekly major local newspaper of general circulation where the proposed site or facility is located.
 - (b) Verification of publication shall be provided to the cabinet within thirty (30) calendar days of the publication date. The notice shall contain ~~[the following information]~~:
 - 1. ~~[(a)]~~ Name and address of the cabinet's office processing the permit action for which notice is being given;
 - 2. ~~[(b)]~~ Name and address of the permit applicant and, if different, of the facility or site regulated by the permit;
 - 3. ~~[(c)]~~ A brief description of the business conducted or activity **included [described]** in the permit application;
 - 4. ~~[(d)]~~ A description of the proposed location of the special waste site or facility, including a description of the primary access roads;
 - 5. ~~[(e)]~~ Name, address, and telephone number of a person from whom interested persons may obtain further information; and
 - 6. ~~[(f)]~~ The following statement: "Within thirty (30) days of the publication of this notice, any person who wishes to comment on the application may submit written comments and, if desired, request from the cabinet, a public meeting" ~~[; and]~~
 - ~~[(g)] [Any additional information required by the cabinet].~~
- (2) The cabinet may schedule a public meeting if a significant degree of public interest exists as a result of a public notice published under this section.
- (3) Upon notification by the cabinet that a draft permit has been prepared, the permit applicant shall publish a public notice, supplied by the cabinet, in a daily or weekly, major, local newspaper of general

circulation where the proposed site or facility is located. Verification of publication shall be provided to the cabinet within thirty (30) days of the publication date. The notice shall contain ~~[the following]~~:

- (a) The information required by subsection (1)(b)1. ~~Through~~ ~~to~~ 6. ~~(1)(a) to (e)~~ of this section;
- (b) The location of a repository for documents in the county in which the site or facility is proposed, including copies of the proposed permit, fact sheet, and application;
- (c) The time and place of any hearing already scheduled and procedures by which the public may participate in the public comment period and public hearing;
- (d) The location of the administrative record required by Section 3 of this administrative regulation, including:

1. A local repository in the county in which the site or facility is proposed; ~~;~~
2. The times at which the record is open for public inspection; ~~;~~ and
3. A statement that all data submitted by the applicant is available as part of the administrative record; ~~and~~

(e) The following statement: "Any person who wishes to comment on the draft permit decision for this special waste site or facility may file comments with the cabinet and, if desired, request a public hearing within thirty (30) days of the publication of this notice pursuant to ~~[Section 6 of]~~ 401 KAR 45:050, **Section 6.**" ~~;~~ ~~and~~

~~[(f)] [Any additional information required by the cabinet.]~~

(4) Public notices may describe more than one (1) permit or permit action.

(5) Public notices shall be of a size to include not less than two (2) columns widths for advertising and shall be in a display format.

(6) The cabinet shall distribute the public notice **established** ~~[specified]~~ in subsection (1) of this section to ~~[the following]~~:

- (a) The Kentucky Department of Fish and Wildlife Resources; ~~;~~
- (b) The U.S. Fish and Wildlife Agency; ~~;~~
- (c) The Advisory Council on Historic Preservation; ~~;~~
- (d) The State Historic Preservation Officer; ~~;~~ ~~and~~
- (e) Other appropriate government authorities, including **those of** any other affected states; ~~and~~
- (f) ~~(b)~~ Any unit of local government having jurisdiction over the area where the facility is proposed to be located; ~~;~~ ~~and~~
- (g) ~~(e)~~ ~~[Each state agency, division, or department having any authority under state law with respect to the construction or operation of the proposed site or facility].~~

(7) The cabinet shall use any other public notice method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(8) In addition to the published public notices required in this section, an applicant shall deliver a notice that has been prepared by the cabinet to ~~[the following individuals]~~:

- (a) Landowners of all adjacent and abutting properties surrounding the proposed special waste site or facility; and
- (b) Occupants of all buildings or units within a building on adjacent and abutting properties surrounding the proposed special waste site or facility.

Section 5. Public Comment Period. The public comment period shall allow at least thirty (30) days for public comment during which any interested person may submit written comments on the application or permit decision, and may request a public hearing if a hearing has not already been scheduled. The comment period shall commence on the date of publication of the public notice.

Section 6. Public Hearings.

- (1) The cabinet may hold a public hearing on the basis of written request or **if[when]** a significant degree of public interest exists concerning a special waste site or facility permit decision. The cabinet may hold a public hearing to clarify one (1) or more issues involved in the permit decision.
- (2) **If[Whenever]** a public hearing is held, a presiding officer shall be designated by the cabinet for the hearing who shall be responsible for its scheduling and orderly conduct.
- (3) Any person may submit oral or written statements and data. Reasonable limits may be set upon the time allowed for oral statement, and the submission of statements in writing may be required.
- (4) A written transcript of the hearing shall be made available to any person upon payment of the actual cost of reproducing the original.

Section 7. Reopening of the Public Comment Period.

- (1) If any data, information, or arguments submitted during the public comment period, including information or arguments that any condition of the proposed permit or permit denial is inappropriate, appear to raise substantial new questions concerning a permit, the cabinet may:
 - (a) Prepare a new draft permit; or
 - (b) Reopen or extend the comment period to provide interested persons an opportunity to comment on the information or arguments submitted.
- (2) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. A public notice shall define the scope of the reopening.
- (3) The cabinet may also, in the circumstances **established[described]** in subsection (1) of this section, elect to hold further proceedings. This decision may be combined with any of the actions **established[enumerated]** in subsection (1) of this section.

Section 8. Response to Comments.

- (1) At the time that any final permit decision is issued, the cabinet shall issue a response to comments. This response shall:
 - (a) **State[Specify]** which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and
 - (b) Briefly describe and respond to all [~~significant~~] comments on the draft permit raised during the public comment period, or during any public hearing.
- (2) The response to comments shall be available to the public and shall be deposited in an appropriate facility in the county **in** which the site or facility is proposed.

Section 9. Adjudicatory Hearing. An aggrieved person's right to an adjudicatory hearing pursuant to KRS 224.10-420 **shall commence[commences]** upon the completion of the public comment and hearing period as **established[provided]** in Sections 5 **through[~~6~~, and]** 7 of this administrative regulation and upon the cabinet's rendering of a final permit decision in accordance with **[Section 9 of]** 401 KAR 45:030, **Section 9**.

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