

## SUGGESTED SUBSTITUTE

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

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

RELATES TO: KRS ~~224.1~~[224.04], 224.10, 224.40, 224.46, 224.50, 224.99, Chapter 355

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 managing, processing, or 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*] the financial requirements for closure and postclosure of special waste sites or facilities but does not establish financial assurance requirements for biosolids from the treatment of domestic sewage or sewage sludge from a treatment facility. Information related to the permitting of biosolids is located in 401 KAR 45:105.

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

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

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

- (a) Design;
- (b) Site grading and drainage;
- (c) Hauling and placing of each element of the approved cap;
- (d) Final grading and drainage of the cap;
- (e) Revegetation of the cap; and
- (f) Quality control and construction certification.

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

(3) The owner or operator may request a reduction in the closure cost estimate and the amount of financial assurance *established*[*provided*] under Section 5 of this administrative regulation if the owner

or operator[he] can demonstrate that the cost estimate exceeds the maximum cost of closure at any time over the life of the special waste disposal site or facility.

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

### Section 3. Postclosure Cost Estimate.

(1)

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

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

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

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

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

(5) The owner or operator shall keep a copy of the latest postclosure cost estimate at the site or facility until ~~[he has been]~~ notified by the cabinet that the owner or operator[he] has been released from postclosure financial assurance requirements for the entire facility under Section 6 of this administrative regulation.

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

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

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

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

Section 5. Closure Financial Assurance. The owner or operator of a special waste site or facility governed by[subject to] this administrative regulation shall establish, in accordance with Section 4 of this administrative regulation, financial assurance for closure of the facility, in an amount equal to the most recent closure cost estimate prepared in accordance with Section 2 of this administrative regulation. The owner or operator shall provide continuous coverage for closure until released from financial assurance

requirements pursuant to ~~[Section 4 of]~~ 401 KAR 45:100, Section 4, or ~~[Section 5 of]~~ 401 KAR 45:110, Section 5.

Section 6. Postclosure Financial Assurance. The owner or operator of a special waste site or facility governed by~~[subject to]~~ this~~[the]~~ administrative regulation shall establish, in accordance with Section 4 of this administrative regulation, financial assurance for postclosure care of the facility, in an amount equal to the most recent postclosure cost estimate prepared in accordance with Section 3 of this administrative regulation. The owner or operator shall provide continuous coverage for postclosure until released from the financial assurance requirement pursuant to ~~[Section 4 of]~~ 401 KAR 45:100, Section 4, or ~~[Section 5 of]~~ 401 KAR 45:110, Section 5.

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

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

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

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

(b) A letter of credit submitted on form~~[as set forth on Form DEP 7094F entitled]~~ ~~[“]Irrevocable Letter of Credit, [“] DWM 4670; or~~ (November 2016). The requirements contained in the irrevocable letter of credit are incorporated in this administrative regulation by reference. The irrevocable letter of credit may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky, 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at eec.ky.gov/environmental-protection/waste;]

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

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

Section 8. Release of Financial Assurance.

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

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

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

Section 10. Financial Assurance for Captive Facilities. The cabinet may accept other satisfactory financial assurance as adequate financial responsibility for a special waste site or facility ~~[which is]~~ exclusively owned and operated by a special waste generator on property owned by the special waste generator for the purpose of accepting special waste exclusively from the special waste generator.

Section 11. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Performance Agreement", form DWM 4650, ~~[February 2019]~~;

(b) "Irrevocable Letter of Credit" form DWM 4670, ~~[February 2019]~~; and

(c) "Escrow Agreement", form DWM 4665, ~~[February 2019]~~.

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

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

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