

Landfill Permitting Overview

Introduction

In this we will take you through the major steps of the permitting process, but this guideline will not fill out the application for you. You will still need a set of the statutes and the regulations to make sure that all the necessary information is included in the application.

The landfill permitting law is found in the Kentucky Revised Statutes (KRS) Chapter 224 and the regulations are in 401 Kentucky Administrative Regulations (KAR) Chapters 30, 40, 45, 46, 47, 48, and 49.

One of the most commonly asked question of the division is, "I have this piece of land and I was thinking about putting a landfill on it. What should I do to get a landfill permit?" Well, to answer that question one has to consider what kind of landfill you want to construct.

The first category is a **contained landfill** (one that accepts Municipal Solid Waste) and will cost in the neighborhood of \$750,000 to \$1.2 million for the application. This includes design engineer's cost and the permitting fees. A contained landfill will cost in the neighborhood of \$150,000 to \$250,000 per acre to construct the liner system and the cap. This does not include the operating cost. Most contained landfill owners charge \$30-\$35 per ton to recoup costs and to make a profit.

The second category is a **construction/demolition debris (CDD) landfill** (one that accepts waste from non-hazardous construction and demolition debris) and will cost approximately \$500,000 to \$1 million for the application. This includes the design engineer's cost and the application fees. To construct a CDD landfill liner system and the cap will cost approximately \$75,000 per acre. This also does not include the operating cost of the landfill. Most CDD landfill owners charge \$15-\$20 per ton.

The third category is a **residual landfill**. This landfill design is based on the type of waste to be put in the landfill. The liner and cap system can be as little as clear the ground of vegetation, put the waste in and cover it up with dirt to a double composite liner system. The cost of this type of landfill has a wide range of cost which is dependent on the waste that will be placed in it. The permit application fee for all three phases of the application process is \$5,500. The consultant fees range from \$250,000-\$750,000. Residual landfill owners charge \$15-\$20 per ton.

The fourth landfill category is a **special waste landfill**. Historically, this landfill was commonly for the disposal of utility waste (fly ash, bottom ash, and scrubber sludge) generated from burning coal. However, in 2017, the cabinet promulgated new Chapter 46 regulations for disposal and for beneficial use of coal combustion residuals (CCR), which in essence incorporated the technical standards of 40 CFR 257 Subpart D. The requirements for the design and construction of a CCR landfill are similar to the contained landfill requirements. The Chapter 46 regulations are presently (as of September 2018) undergoing revisions.

The landfill application for contained landfills, construction/demolition debris landfills, and residual landfills is in three phases: the Notice of Intent, the Administrative, and the Technical. There are four public notices required to be published by the applicant and two comment periods to allow public participation. The details of the public participation process are described in the appropriate phase of the application.

The landfill application that has taken the least amount of time to go through the process has been sixteen months. Other landfill applications on average take about eighteen to twenty-four months to go through the process (this includes the time to correct any deficiencies with the application and the public hearings that may be requested).

Solid Waste Landfill Applications (Contained, CDD, and Residual)

Step One, Local Determination

Before you submit your solid waste permit application to the Division of Waste Management, you must submit your proposal to the Local Solid Waste Governing Body of the county in which the site is proposed. This determination is to ensure that the proposed facility is consistent with the county and/or area plan. The governing body has sixty (60) calendar days from receipt of the written request to make the determination. The requirements for this determination can be found in KRS 224.40-315. Local determination not required for residual landfills if they own and operate their own landfill only for disposal of their own waste.

It's suggested at this point you may want to schedule a meeting with the Division of Waste Management concerning the location of the site and go over the permits that might be necessary for this project, such as KPDES discharge permits, floodplain permit, transportation permit, etc. The division has a list of agencies and points of contacts for these other permits. Division staff is also available to discuss the permitting and public notification process.

Step Two, Submitting the Notice of Intent Application

Now that you have your Local Determination (this determination can be either positive or negative), place the determination in the "Notice of Intent" Application phase and it is ready to be submitted to the Division of Waste Management.

It would be noteworthy to mention that if the determination is negative that in all likelihood the division would deny the application during the first phase.

The requirements of the Notice of Intent application can be found in 401 KAR 47:170. Generally the information required for the Notice of Intent application is a review of published information such as general groundwater data, soil boring and rock coring plan, threatened and endangered species data, historic places, archeological sites, etc. Once the division accepts the application, the applicant will be required to publish a notice in a newspaper with the largest circulation in the area in which the landfill will be located. One of the most common errors with a submittal of an application is that it is not submitted by an individual with signature authority for the company. 401 KAR 47:160, Section 6 describes who may submit an application. The division has thirty (30) working days to review the application after it is accepted. If there are deficiencies with the application, you will be notified by letter listing all of the deficiencies. Once the deficiency letter is dated and signed the review clock is tolled which means it stops until the application is resubmitted to correct the deficiencies of the application. The review clock starts from the point it stopped (the clock does not restart at thirty (30) working days). An important section of the application is to consider all the variances and/or alternate designs that may be necessary for your project. The siting requirements in 401 KAR 48:050 need to be closely evaluated for all new landfill sites.

During this stage of the permitting process the division would like to have a meeting with the applicant and other agencies that might be affected by the issuance of a landfill permit. During that meeting the applicant would be advised of all the permits that would be necessary for this project and the timing of those permits, so that by the end of the permitting process with the Division of Waste Management you would have all necessary permits in hand at one time.

Step Three, the Administrative Application

The Administrative application is the second phase of the permitting process. This phase of the application contains the site specific information for developing the technical design of the landfill. The application will contain information concerning the groundwater flow direction, estimates on the amount of soil that is available to construct and operate the landfill, the types and the sources of waste, and a conceptual design of the landfill cap and liner design. The requirements of the "Administrative" application phase may be found in 401 KAR 47:180. The division has sixty (60) working days to review the application. As with the first phase, a letter will be sent if any deficiencies are found during the review process and the tolled periods are the same as in the first phase.

Once the division accepts the Administrative application as complete you will be requested to supply two executive summaries under separate covers which will be sent to the county judge executive and the public library for the county in which the landfill will be located. The applicant will be notified when they may place the public notice for the administrative phase in the newspaper.

This public notice will have a thirty (30) day comment period to allow any interested party an opportunity to comment on the proposed landfill. This comment period will not hold up the review of the Technical application once it is received. If anyone wishes they may request a public hearing as described in 401 KAR 47:140 Section 7 and 12. This hearing will be held in the county in which the landfill is proposed and is better described as a meeting to exchange information concerning the proposed landfill.

If a hearing is held, a court reporter will be present to record the meeting. Copies of the transcript will be available for anyone who may wish to have a copy. The only cost for the copy would be the cost to the division to reproduce it.

Step Four, the Technical Application Phase

The Technical Application phase is the last phase of the permitting process. The technical application contains the design of the landfill cap, liner, and groundwater monitoring plan with the associated support facilities such as ponds, roads, maintenance buildings, etc. The requirements of the technical application can be found in 401 KAR 47:190.

A public notice is required to be published once the division receives the technical application. This notice states that the technical application has been received by the division for review. If you have the technical application prepared and ready for submittal at the end of the administrative application phase, this public notice can be combined with the administrative application public notice. In other words the notice for the administrative application would read something like this "the administrative application is complete and the technical application has been received for review."

The division has ninety (90) working days for the review of the technical application. As with the first phase, a letter will be sent if any deficiencies are found during the review process and the tolled periods are the same as in the first phase. When all the deficiencies have been corrected and each phase of the permit application has met all the applicable regulations the division will issue a draft construction permit. A final public notice is published with a thirty (30) day comment period.

It usually takes the division two weeks to issue the draft permit. During this time the division is working out with the applicant the conditions of the permit and gathering the administrative record which will be housed in the public library for the duration of the comment period.

Once the comment period expires and no comments or request for a hearing have been received, the construction permit can be issued. This process usually takes the division two weeks to issue the permit. During this time each phase of the application is being stamped approved and signed to go along with the permit authorizing the construction of the landfill. You will need these plans to construct the landfill correctly.

Hearings requested during the technical comment period: if a hearing is requested during this period, it is an adjudicatory hearing. This means that it is an adversarial proceeding in which everyone has a lawyer. This proceeding will add six (6) to eight (8) months to the permitting process. Until the issue(s) are resolved the division cannot issue the construction permit.

Construction

The division will be sending representatives to verify the construction of the landfill to make sure that it is built in accordance with the approved design. Once the division has received your consultant engineer's certification that the landfill has been built according to the approved design, the division has ten (10) days to issue the operating permit, providing that the financial assurance documents (closure and closure care bonds) are in order and have been accepted by the division.