224.46-520 Prerequisites to issuance of permit for storage, treatment, recycling, or disposal of hazardous waste -- Standards for closure -- Monitoring, maintenance, and remedial measures -- Financial responsibility -- Closure for noncompliance.

(1) No person shall engage in the storage, treatment, recycling, or disposal of hazardous waste without first notifying the cabinet and obtaining construction and operation permits from the cabinet. The cabinet shall promulgate regulations establishing standards for such permits but in no case shall a permit to construct or operate a hazardous waste site or facility or a regional integrated waste treatment and disposal demonstration facility be issued unless it can be demonstrated that the proposed facility can be integrated into the surroundings in an environmentally compatible manner, including but not limited to, insuring that hydrologic, seismologic, geologic, and soil considerations have been adequately addressed in the permit application and in an operational plan. In no case shall a permit to construct a hazardous waste incinerator, landfill, or other site or facility for the land disposal of hazardous waste be approved or issued prior to notification of the cabinet by the local unit of government of its actions pursuant to KRS 224.40-310(6). The cabinet shall not issue a construction permit to a regional integrated waste treatment and disposal demonstration facility until it has been issued a certificate of environmental safety and public necessity. A person desiring a construction permit shall file an application on forms supplied by the cabinet which shall contain such information as the cabinet deems necessary and provide evidence that the hazardous waste shall be treated, stored or disposed of in the manner prescribed by the cabinet. The applicant shall not initiate construction at the proposed site of a new facility for the storage, treatment, or disposal of hazardous waste until notice has been given to that portion of the public most likely to be affected by the operation of the proposed facility pursuant to KRS 224.40-310(1) to (5) and until a construction permit for said facility has been issued by the cabinet. The cabinet may consider past performance in this or related fields by the applicant. The cabinet, in making a determination to issue, deny, or condition a construction permit, shall consider the following:

(a) An evaluation of alternatives, to include other locations and other treatment, storage, and disposal approaches, different from those proposed, available to the applicant;

(b) An evaluation of the public health, safety, and environmental aspects of the proposals;

(c) An evaluation of the social and economic impacts of the proposed action on the affected community, to include, at a minimum, changes in property values, community perception and other psychic costs, and the costs and availability of public services, facilities and improvements required to support the facility and protect public health, safety, and the environment;

(d) An evaluation of mitigation measures to alleviate problems identified in paragraphs (b) and (c) of this subsection; and

(e) The relationship of the proposal to local planning and existing development.

Except that in the case of hazardous waste incinerators, landfills, or other sites or facilities for the land disposal of hazardous waste, the provisions of paragraphs (c) and (e) of this subsection shall be determined by the local unit of government pursuant to KRS 224.40-310(6).

(2) The cabinet may prohibit the land disposal of any hazardous wastes. The criteria and list of hazardous waste to be prohibited by the cabinet from land disposal shall be identical to any such criteria and list promulgated by the United States Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act of 1976, as amended, (Public Law 94-580). The land disposal of hazardous waste may be permitted for methods determined by the cabinet to be protective of human health and the environment for as long as the waste remains hazardous.

(3) In conjunction with the application for permits under this section, the applicant shall establish adequate financial responsibility as follows:

(a) The applicant shall file as part of his application for a permit to construct the facility an estimate of the cost of closing the facility after its capacity is reached or operations have otherwise ceased and an estimate of the cost of post-closure care. In the case of storage facilities, the cost of closing shall include the cost of properly disposing of the hazardous waste stored. The cabinet shall evaluate this cost estimate and either accept the estimate as made or shall revise it in accordance with acceptable guidelines, using, where available, actual data on closure costs associated with similar existing facilities. Before a permit to operate can be issued, the applicant for any hazardous waste permit shall assure that the funds needed to close the facility are available by establishing assurance through one (1) or more of the following mechanisms: cash, certificates of deposit, irrevocable credit, or other sureties satisfactory to the cabinet and the mechanism shall be established by agreement with the cabinet. The agreement shall provide that disbursement is permissible only upon written approval of the cabinet and whenever, on the basis of any information, the cabinet determines that the owner or operator is in violation of any of the closure requirements for the facility, that the cabinet shall have the right to use part or all of the closure fund to carry out the closure requirements. The financial institution, surety company, or escrow agent shall release these funds upon receiving a forfeiture order of the cabinet issued pursuant to an appropriate administrative hearing considering one (1) or more closure violations. Upon determination that closure has been satisfactorily accomplished, the cabinet shall release the applicant from further financial responsibility for closure;

(b) Any applicant for a hazardous waste disposal permit shall file with the cabinet as part of his application an estimate of the annual cost of post-closure monitoring and routine maintenance at the site. The cabinet shall evaluate the cost estimate, and, after such modification as may be necessary in light of its evaluation, shall give notice of acceptance of the cost estimate. This cost estimate which will be referred to as the annual post-closure operating cost shall then be used to determine the amount of the post-closure monitoring and maintenance fund to be used for monitoring and maintenance for a period of a minimum of thirty (30) years

after facility closure. The post-closure monitoring and maintenance fund shall be cash, irrevocable credit, or other sureties satisfactory to the cabinet and shall be established by an agreement with the cabinet. The agreement shall provide that whenever, on the basis of any information, the cabinet determines that the owner or operator of the facility is in violation of any of the post-closure monitoring and maintenance requirements, the cabinet shall have the right to use part or all of the funds to carry out the post-closure monitoring and maintenance for the facility. The funds shall be released upon receipt of a forfeiture order of the cabinet issued pursuant to an appropriate administrative hearing considering one (1) or more post-closure monitoring and maintenance violations. One (1) year after closure, and annually thereafter for a period of thirty (30) years, the applicant who has carried out all necessary post-closure maintenance and monitoring requirements may upon application to the cabinet be reimbursed out of the post-closure monitoring and maintenance fund an amount equal to the estimated costs for monitoring and routine maintenance for that year. Request for release of funds for reimbursement shall be accompanied by an itemized list of costs incurred. Upon determination that the expenditures incurred are in accordance with the approved plan, or otherwise justified, the cabinet may authorize the release of the funds to the applicant in writing. Any funds remaining in the account following a termination hearing in which the applicant is released of further responsibility shall likewise be released to the applicant; and

(c) All applicants for any hazardous waste permit shall provide evidence of financial responsibility in an amount and for a time period specified by the cabinet for the purpose of corrective action on and off-site and satisfying claims arising out of injury to persons or property resulting from the release or escape of hazardous waste into the environment. Such financial responsibility may be established by one (1) or a combination of evidence of liability insurance, self-insurance, or other evidence of financial responsibility acceptable to the cabinet. The level of self-insurance shall not exceed ten percent (10%) of equity, and financial responsibility shall be maintained during the entire operation of the facility and until termination. The minimum liability coverage for sudden occurrences, exclusive of legal defense costs, for a storage, treatment, or disposal facility shall be one million dollars ($1,000,000) per occurrence with an annual aggregate of two million dollars ($2,000,000). The minimum liability coverage for nonsudden occurrences, exclusive of legal defense costs, for a hazardous waste facility involving land disposal shall be three million dollars ($3,000,000) per occurrence with an annual aggregate of six million dollars ($6,000,000). Combined coverage for sudden and nonsudden occurrences shall be no less than the combined totals herein set forth for separate coverage. The cabinet shall accept a demonstration of financial responsibility during the post-closure period of a facility for a lesser amount for sudden or non-sudden occurrences where it is shown that a lesser amount of financial responsibility will be adequate to provide compensation for third-party injury or property

damage and corrective action, considering site and facility conditions and other site-specific factors. Financial responsibility in post-closure for sudden and non-sudden occurrences and corrective action may be demonstrated through a letter of credit, surety or other bond, corporate guarantee, trust fund, liability insurance, self-insurance, or combination of these or other methods as approved by the cabinet.

(4) The cabinet shall promulgate regulations establishing minimal standards for closure, post-closure monitoring and maintenance, and termination of sites for the disposal of hazardous waste. Any person who obtains a disposal permit for hazardous waste shall be responsible for the post-closure monitoring and maintenance of the permitted facility for a minimum of thirty (30) years after closure of the facility. The permittee may apply to the cabinet for termination of the responsibility for post-closure monitoring and maintenance at any time during the thirty (30) year post-closure monitoring and maintenance period. Upon receipt of such application, the cabinet shall provide notice to the public and to the owner or operator and an opportunity for a hearing on the termination of the site. In this proceeding, the burden shall be on the applicant to prove by clear and convincing evidence that additional post-closure monitoring and maintenance is not necessary for adequate protection of public health or the environment. The cabinet shall determine either that post-closure monitoring and maintenance of the site is no longer required, in which case the applicant shall be relieved of such responsibility; or that additional post-closure monitoring and maintenance of the site as specified in a plan of operation is still required, in which case the cabinet may order appropriate remedial measures, impose restrictive covenants as to future use of the property involved, or otherwise condition termination as may be necessary for adequate protection of public health and the environment. The cabinet may require additional monitoring, site maintenance, or remedial measures consistent with KRS Chapter 224 any time after termination of the post-closure monitoring and maintenance of the permitted facility in the event that the cabinet determines such actions are necessary for the protection of human health and the environment.

(5) In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where jurisdiction cannot be obtained with reasonable diligence in any state court or any federal court over an owner or operator likely to be insolvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility shall be provided under this section may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this subsection, such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(6) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this section. Nothing in this subsection shall be construed to limit any other federal statutory, contractual or common law

liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under Section 107 or 111 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 or other applicable law.

(7) For the purpose of this subsection, the term guarantor means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this section.

(8) Any hazardous waste treatment, storage, or disposal facility shall close in accordance with the permit and this chapter, if the site or facility has not been maintained in operational condition in conformance with this chapter, for any period of six (6) months or longer. The permittee shall be afforded an opportunity to be heard on the proposed termination of authorization to operate, and termination under this section shall not be required where the permittee demonstrates that steps have been taken to bring the facility, within a reasonable time not to exceed ninety (90) days, into full operational status in accordance with this chapter and applicable regulations. Within ninety (90) days, the cabinet shall review existing hazardous waste treatment, storage, or disposal permits to determine compliance with this section.

Effective: June 29, 2017

History: Amended 2017 Ky. Acts ch. 117, sec. 47, effective June 29, 2017. -- Amended 2006 Ky. Acts ch. 22, sec. 1, effective July 12, 2006. -- Amended 1990 Ky. Acts ch. 424, sec. 1, effective April 10, 1990; and ch. 454, sec. 1, effective July 13, 1990. -- Amended 1988 Ky. Acts ch. 26, sec. 2, effective March 4, 1988; and ch. 44, sec. 3, effective July 15, 1988. -- Amended 1986 Ky. Acts ch. 237, sec. 3, effective July 15, 1986; and ch. 298 sec. 5, effective July 15, 1986. -- Amended 1982 Ky. Acts ch. 279, sec. 13, effective July 15, 1982; and ch. 299, sec. 1, effective July 15, 1982. -- Created 1980 Ky. Acts ch. 264, sec. 5, effective July 15, 1980.

Formerly codified as KRS 224.866.

Legislative Research Commission Note. Subsection 8 of this section became effective on April 10, 1990, because of the emergency clause contained in 1990 House Bill 807, Ky. Acts ch. 424, sec. 2.