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REGULATIONS COMPILER

1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 (New Administrative Regulation)

4 103 KAR 8:160. Valuation of municipal solid waste landfill facilities.

5 RELATES TO: KRS 132.020, 132.200, 224.1-010

6 STATUTORY AUTHORITY: KRS 131.130, 132.202

7 NECESSITY, FUNCTION, AND CONFORMITY: HB 402 passed during the 2016
8 session of the Kentucky General Assembly mandated the creation KY Acts Chapter 93 authorizing
9 the promulgation of this administration regulation relating to the taxation of property used as a
10 landfill, also known as a municipal solid waste disposal facility. This administrative regulation
11 establishes a uniform system of ad valorem valuation for a municipal solid waste disposal facility
12 as defined in KRS 224.1-010(15).

13 Section 1. Definitions. (1) "Compaction ratio" means the ratio that expresses the
14 relationship of the number of tons (2000 pounds) of waste that will fill one (1) cubic yard of landfill
15 capacity. For example, a compaction ratio of 0.60 means that sixty (60) percent of one (1) ton
16 (1,200 pounds) of waste can be compacted into one cubic yard of landfill capacity.

17 (2) "Cover materials" means soil or other suitable material that is spread and compacted
18 on the top and side slopes of disposed waste in order to control disease vectors, gases, erosion,
19 fires, and infiltration of precipitation or run-on; support vegetation; provide trafficability; or assure
20 an aesthetic appearance.

21 (3) "Department" means Department of Revenue, Finance and Administration Cabinet,

1 Commonwealth of Kentucky.

2 (4) "Discount rate" means a pre-tax percentage rate used to discount the annual royalty
3 income over the projected remaining economic life of the landfill to a present value. The discount
4 rate shall be seventeen (17) percent unless the landfill operator or the department establishes a
5 higher or lower discount rate based upon applicable market factors and the applicable facts and
6 circumstances attributable to the landfill.

7 (5) "Effective tipping fee" means the average net dollar amount collected per ton for
8 depositing waste into the landfill being assessed not including surcharges, host fees, and related
9 taxes.

10 (6) "Landfill" means a municipal solid waste disposal facility as defined by KRS
11 224.1-010(15) but does not include construction and demolition debris (CDD) landfills of less than
12 one (1) acre.

13 (7) "Landfill valuation method" means a discounted cash flow, also known as yield
14 capitalization, which is a valuation methodology used to determine the fair cash value of a
15 landfill's real property.

16 (8) "Other landfill income" means the five (5) year average of income generated by a
17 landfill from sources other than effective tipping fees, net of applicable expenses.

18 (9) "Present value" means the sum of the discounted projected annual royalty income over
19 the remaining life of the landfill. The present value formula is:

20
$$PV = \frac{CF_1}{(1 + Y)^1} + \frac{CF_2}{(1 + Y)^2} + \frac{CF_3}{(1 + Y)^3} + \frac{CF_4}{(1 + Y)^4} + \frac{CF_5}{(1 + Y)^5} + \dots + \frac{CF_n}{(1 + Y)^n}$$

- 21 PV = present value of landfill
22 CF = the annual projected royalty income
23 Y = the annual pre-tax discount rate
n = the number of annual periods in the projection

1 (10) "Remaining permitted capacity" means the volume of permitted airspace remaining
2 for the placement of waste materials.

3 (11) "Reversionary value" means the potential future market value of a landfill after all
4 post-closure regulatory requirements, including a required minimum post-closure monitoring
5 period of at least thirty (30) years, have been fulfilled by the owner or operator.

6 (12) "Royalty income" means that portion of effective tipping fees and other landfill
7 income that would be paid pursuant to a presumed comparable market lease agreement by the
8 landfill operator to the real property owner in consideration for the right to use the real property
9 for landfill purposes.

10 (13) "Royalty rate" means a percentage rental rate to real property applied to the sum of
11 the annual effective tipping fee revenue and other landfill income that results in the estimated
12 royalty income for each year of the estimated remaining economic life of the landfill. The royalty
13 rate shall be eighteen (18) percent unless the landfill operator or the department establishes a higher
14 or lower royalty rate based upon applicable market factors and the applicable facts and
15 circumstances attributable to the landfill.

16 (14) "Tax year" means a calendar tax year.

17 (15) "Tons of waste" means the five (5) year average of annual tons of waste received by
18 the landfill, as determined utilizing information submitted to the Division of Waste Management
19 for the Kentucky Department for Environmental Protection on Form DEP 7046 or DEP 7046Q.
20 When calculating the average, consideration shall be given to factors that alter the five (5) year
21 average as an appropriate estimate.

22 (16) "Waste" means waste as defined by KRS 224.1-010(31)(a).

23 Section 2. Landfill valuation methodology formula. (1) The department shall determine

1 the fair cash value of a landfill's real property in compliance with the landfill valuation method
2 established in this subsection.

3 (a) The department shall estimate the remaining permitted economic life of the landfill by
4 dividing the estimated annual cubic yards of waste deposited into the landfill into the total
5 remaining permitted capacity of the landfill.

6 1. The compaction ratio shall be calculated by taking the average of the five (5) most
7 recent compaction ratios from the Solid Waste Landfill Annual Survey submitted to the Division
8 of Waste Management for the Kentucky Department for Environmental Protection on Form DEP
9 8059. When calculating the average, consideration shall be given to factors that alter the five (5)
10 year average as an appropriate estimate.

11 2. The remaining permitted capacity shall be as reported on the remaining airspace line
12 item in the most recent Solid Waste Landfill Annual Survey submitted to the Division of Waste
13 Management for the Kentucky Department for Environmental Protection on Form DEP 8059 for
14 the landfill being assessed. The volume shall be adjusted for the capacity consumed from the date
15 of the survey used to prepare the calculation, until the end of the tax year with no annual intake
16 volume growth over the remaining forecasted permitted life of the landfill. Actual tons for the
17 applicable dates shall be converted to permitted cubic yards using the compaction ratio and the
18 result will be subtracted from the remaining permitted capacity as presented in Form 8059. If
19 cover materials are used at the landfill, the total remaining permitted capacity shall be multiplied
20 by .85 to account for a standard reduction of remaining permitted capacity for cover materials.

21 3. The estimated annual cubic yards of waste deposited into the landfill shall be equal to
22 the average of the annual cubic yards of waste deposited into the landfill for the five (5) tax years
23 prior to the current tax year. The landfill operator shall report to the department the annual cubic

1 yards of waste deposited into the landfill for the five (5) tax years prior to the current tax year by
2 April 30 of the current tax year.

3 4. The remaining economic life of the landfill shall be calculated as follows: remaining
4 permitted capacity (cubic yards) divided by the estimated annual cubic yards of waste deposited
5 equals the remaining permitted economic life of the landfill.

6 5. The landfill operator shall provide the department with copies of the annual surveys
7 and all quarterly reports filed by the landfill operator with the Division of Waste Management
8 pursuant to 401 KAR 47:190 during the five (5) years on or before April 30 of the current tax year
9 and a copy of its current operating permit.

10 (b) The effective tipping fee shall be calculated by dividing landfill historical tipping fee
11 revenue (excluding surcharges, host fees, and related taxes) collected for the five (5) most recent
12 tax years by landfill related historical tonnage for the five (5) most recent tax years as demonstrated
13 by the records of the landfill operator.

14 1. The landfill operator shall provide the department with its calculation of the effective
15 tipping fees for the five (5) tax years prior to the current tax year, together with its annual operating
16 financial statements for each tax year, that shall include tipping fee revenue, expenses for
17 surcharges, host fees and related taxes, and other landfill income.

18 2. The department shall review the effective tipping fees calculation submitted by the
19 landfill operator and shall estimate the forecasted effective tipping fee for the current tax year.
20 Increases in forecasted effective tipping fees shall be determined by an indexed factor not to exceed
21 the annual Consumer Price Index (CPI), as defined by KRS 154.30-010, for the year prior to the
22 current tax year.

23 3. In estimating the annual effective tipping fee, the department shall consider any facts

1 or circumstances that exist that may have an impact on current or future effective tipping fees.

2 (c) The department shall estimate the other landfill income for the current tax year based
3 upon the records of the landfill operator for the five (5) tax years prior to the current tax year.

4 1. The landfill operator shall provide the department with its calculation of other landfill
5 income for the five (5) tax years prior to the current tax year, together with its annual operating
6 financial statements provided pursuant to this section.

7 2. The department shall review the other landfill income submitted by the landfill operator
8 and included in the operating financial statements submitted and shall estimate other landfill
9 income for the current tax year and any annual increase in the other landfill income.

10 3. In estimating other landfill income, the department shall consider all relevant facts or
11 circumstances that exist that may have an impact on current or future other landfill income.

12 (d) If the landfill does not have five (5) years of operating data, due to its date of first
13 operation being less than five (5) years prior to the current tax year, the department shall determine
14 the landfill's compaction ratio, consumed landfill capacity, estimated annual cubic yards of waste
15 deposited, effective tipping fees, and other landfill income as a rolling average of the number of
16 years for which operating data exists for the landfill.

17 (e) The department shall estimate an annual royalty income for each year of the landfill's
18 remaining economic life by the following calculation:

19
$$(((\text{effective tipping fee} \times \text{tons of waste}) + \text{other landfill income}) \times \text{royalty rate}) - \text{general}$$

20
$$\text{administrative expenses} = \text{royalty income}.$$

21 (f) The department shall determine the present value of the royalty income of the landfill
22 for all remaining years of its remaining permitted economic life by applying the discount rate to
23 each year's royalty income as determined pursuant to paragraph (e) of this subsection.

1 (g) The present value of the royalty income for all remaining years of the landfill's
2 remaining economic life shall be the landfill real property valuation to be used as a tax basis.

3 (h) The department shall estimate a reversionary value, if any, as of the date that all post
4 closure regulatory monitoring requirements of federal, state, or local governments are completed.
5 The reversionary value shall be discounted to its present worth as of January 1 of the current tax
6 year and the resulting value shall be added to the sum of all year's present values as calculated
7 pursuant to paragraph (f) of this subsection.

8 (2) The fair cash value of any other real property, including improvements, not already
9 included in the valuation of the landfill through the landfill valuation method shall be assessed by
10 the department in the same manner as real property of all other taxpayers under KRS Chapter 132.

11 (a) State and local real property taxes shall be applied to the assessed value of the other
12 real property and shall be added to the taxes assessed on the real property value determined by the
13 landfill valuation method.

14 (b) The landfill operator shall provide the department with a summary statement of the
15 total acreage of land owned by the landfill company, the total acreage of the permitted landfill
16 area, and the total acreage of the active contained landfill.

17 (3) Any information required to be supplied by the landfill owner or operator in
18 connection with this administrative regulation shall be held in strict confidence by the department
19 unless otherwise required by law.

20 (4) The allocation of value of tangible personal property incorporated into a landfill and
21 certified as pollution control pursuant to KRS 132.020(1)(k) shall be determined by taking the
22 present value of landfill royalty income, as determined in subsection (1) of this section and
23 subtracting out the value attributable to undeveloped land and the value attributable to real property

1 structures (i.e., demonstrative and nonexclusive examples of which include maintenance buildings,
2 perimeter fencing, etc.) not certified as pollution control. The remaining value shall constitute the
3 value allocation attributable to certified pollution control tangible personal property incorporated
4 into the landfill.

103 KAR 8:160

APPROVED:



Daniel P. Bork, Commissioner
Department of Revenue
Finance and Administration Cabinet

7/12/16

Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2016 from 10:00 a.m. to 12:00 p.m., in Room 383, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2016. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact Person: Lisa Swiger, Staff Assistant, Department of Revenue, Finance and Administration Cabinet, 501 High Street, Station 9, Frankfort, Kentucky, 40601, (502) 564-9526 (telephone), (502) 564-2541 (fax), Lisa.Swiger@ky.gov(email).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation No. 103 KAR 8:160

Contact Person: Lisa Swiger

Phone Number: (502) 564-9526

Email: Lisa.Swiger@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a new valuation system for municipal solid waste disposal facilities (“landfills”).

(b) The necessity of this administrative regulation: This administrative regulation was mandated by 2016 Ky. Acts Ch. 93, § 1 (to be codified as KRS 132.202), which requires the Department of Revenue to promulgate administrative regulations under KRS Chapter 13A to implement a valuation methodology for landfills.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 2016 Ky. Acts, Ch. 93, § 4 removed landfills from the list of companies taxed as “public service companies” under KRS 136.120 et seq. § 1 of the Act requires the Department of Revenue to centrally assess all landfills and to bill and collect all ad valorem taxes on such facilities. This administrative regulation establishes a uniform valuation system for landfills based on a discounted cash flow model that determines the value of permitted landfill property based on the tipping fees (the fee charged per ton of waste disposed) it will earn over its remaining useful life. The regulation will establish the procedure for calculating the remaining years of economic life of a landfill—based on the information in the quarterly and annual reports permitted landfills already must file with the Kentucky Department of Waste Management—and will also establish how future tipping fees are to be estimated over the life of the landfill. It will also provide for the valuation of the real property outside the permitted landfill acreage and for the estimation of other income a landfill company may earn from activities such as the production of electricity from captured landfill gas. The definition of “landfills” excludes less-than-1-acre construction and demolition debris (“CDD”) landfills, as these facilities are generally privately-owned by construction and/or demolition companies and used to dispose of waste from their operations. Thus, most of them do not generate tipping fee revenues, which is what the landfill valuation model is based upon. These types of facilities were never subject to assessment by Revenue under the former statutory arrangement, and the legislature’s intention with regard to the revenue impact of HB 402 was to remain revenue neutral. Excluding CDD landfills from the regulation will accomplish this intention, with assessment of those properties remaining the responsibility of the local PVAs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The valuation system for landfills under KRS 136.120(1)(a)(17) was inherently flawed by the limited scope of the property identified in that statute subject to taxation (the statute identified the entities subject to tax as “municipal solid waste disposal *facilities*, as defined by KRS 224.1-010(15),” whereas all other entities identified under KRS 136.120 are either

“companies” or “carriers”). This was inconsistent with the requirement under KRS 136.115 to assess the value of the franchise of companies identified in KRS 136.120, where the “franchise” represents the value of the business operation as a whole. The inconsistency between the statutes led to inconsistent and uneven assessments, which, in turn, led to annual protests of almost all landfill assessments and, eventually led to litigation over the proper valuation methodology. This regulation will establish a uniform and consistent methodology for valuing municipal solid waste landfills using a discounted cash flow analysis.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all permitted landfills in Kentucky. There are currently 26 landfills operating in the state.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The municipal solid waste landfill owner will be required to file an annual return with the Department of Revenue along with copies of its permit, the annual surveys, and all quarterly reports filed by the landfill operator with the Division of Waste Management pursuant to 401 KAR 47:190 during the five years on or before April 30 of the current tax year. The landfill operator will also be required to provide the Department of Revenue with its calculation of the effective tipping fees for the five tax years prior the current tax year, together with its annual operating financial statements for each tax year which shall include tipping fee revenue, expenses for surcharges, host fees and related taxes, and other landfill income. If data for five years is not available due to the beginning date of operation being less than five years prior to the current tax year, a rolling average of the available years’ data will be used.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred by complying with the regulation. The uniform valuation methodology will provide consistency as to a landfill’s assessment on a year-to-year basis.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Municipal solid waste landfill owners will now have a greater degree of certainty from year-to-year what their assessments will be, as the value calculated by the methodology is based on information and records that are readily available to them.

(5) Provide an estimate of how much it will cost the administrative body to implement this

administrative regulation:

(a) Initially: The Department of Revenue will not incur additional cost as the result of this regulation.

(b) On a continuing basis: The Department of Revenue will not incur additional costs on an ongoing basis as the result of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this administrative regulation will be done with existing funds and personnel primarily through the Department of Revenue, Office of Property Valuation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering is not applied. This administrative regulation establishes the uniform valuation methodology for all municipal solid waste landfills in Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 103 KAR 8:160

Contact Person: Lisa Swiger

Phone Number: (502) 564-9526

Email: Lisa.Swiger@ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue, Office of Property Valuation and counties or municipalities which may own and/or operate a municipal solid waste disposal facility ("landfill").

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.100; KRS 131.130(1); KRS 132.202.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation establishes a uniform valuation methodology for all landfills in Kentucky.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No new revenues will be generated. Total revenue receipts for all landfills in Kentucky are approximately \$2.1 million (\$380,000 state, \$1.72 million local) annually, and it is anticipated that the new valuation methodology will produce revenues very near to this amount. However, it is anticipated that there may be some landfill assessments that will be lower than prior years' settlement amounts and some that will be higher than prior years' settlement amounts.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amount of revenues collected in future years by will be similar to the first year.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: