

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (Amended After Comments)

5 401 KAR 102:020. General requirements for a Property Management Plan for Brownfield  
6 Redevelopment Program.

7 RELATES TO: KRS 224.1-400, 224.1-405, 224.1-415, 224.80, 40 C.F.R. Part 312

8 STATUTORY AUTHORITY: KRS 224.1-415

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.1-

10 415 authorizes~~establishes~~ the Brownfield Redevelopment Program and authorizes the cabinet  
11 to administer the program. This administrative regulation establishes the general requirements  
12 for the property management plan required so that the cabinet may concur in writing that the  
13 future use of the property is in accordance with KRS 224.1-415(2)(b) as part of the Brownfield  
14 Redevelopment Program.

15 Section 1. Property Management Plan. A property management plan shall include:

16 (1) A description of the historical and current use of the property;

17 (2) A description of the intended future use of the property;

18 (3) All available information related to:

19 (a) Known releases of petroleum governed by KRS 224.1-405;

1 (b) Known releases of a hazardous substance, or pollutant or contaminant governed by  
2 KRS 224.1-400; and

3 (c) The potential presence or perceived presence of a release of a hazardous substance, or  
4 pollutant or contaminant or petroleum that occurred prior to acquisition of the property;

5 (4) A map that identifies the location of all known hazardous substances, or pollutants or  
6 contaminants, or petroleum on the property;

7 (5) A map that identifies known locations on the property where usage, processes, or  
8 activities, that occurred prior to acquisition, indicate the potential presence or perceived presence  
9 of a release of a hazardous substance, or pollutant or contaminant or petroleum;

10 (6) A description of all known engineering controls, institutional controls, site  
11 characterization activities or remedial actions, if any, currently in place or proposed, by the  
12 applicant or a responsible party, to enable the cabinet to make a determination in accordance  
13 with KRS 224.1-415(2)(b).

14 (a) A schedule to submit to the cabinet, information and documents related to the  
15 implementation of engineering controls, institutional controls, site characterization activities or  
16 remedial actions, implemented by the applicant subsequent to the cabinet's issuance of a  
17 Notification of Concurrence; and

18 (b) A schedule to periodically inspect and verify to the cabinet that engineering controls  
19 and institutional controls, remain in place and are effective;

20 (7) A description of the methods employed and data collected to ensure that the property  
21 use shall not:

22 (a) Interfere with the remediation of the release as required by the cabinet;

23 (b) Increase the impacts of the release on human health and the environment; or

1 (c) Expose the public and environment to unacceptable harm; and

2 (8) A certification statement from a professional engineer or professional geologist,  
3 licensed in accordance with KRS Chapter 322 or KRS Chapter 322A, that the property  
4 management plan meets the requirements of subsection (7) of this section.

5 Section 2. Amendments to the **Property Management Plan**~~property management~~  
6 ~~plan~~. (1) The applicant shall submit an amended property management plan if the methods  
7 employed in the currently approved property management plan are inadequate to ensure that the  
8 use of the property shall not:

9 (a) Interfere with the remediation of the release as required by the cabinet;

10 (b) Increase the impacts of the release on human health and the environment; or

11 (c) Expose the public and environment to unacceptable harm.

12 (2) The amended property management plan shall include:

13 (a) A description of any change to the intended future use of the property;

14 (b) All available information related to releases not previously identified in the currently  
15 approved property management plan and all approved amended property management plans;

16 (c) A revised schedule to periodically inspect and verify to the cabinet that engineering  
17 controls and institutional controls, remain in place and are effective;

18 (d) A description of the methods employed and data collected to ensure that the property  
19 use shall not:

20 1. Interfere with the remediation of the release as required by the cabinet;

21 2. Increase the impacts of the release on human health and the environment; or

22 3. Expose the public and environment to unacceptable harm; and

1 (e) A certification statement from a professional engineer or professional geologist,  
2 licensed in accordance with KRS Chapter 322 or KRS Chapter 322A, that the property  
3 management plan meets the requirements of Section 1(7) of this administrative regulation.

4 (3) Within sixty (60) days of receipt of an amended property management plan, the  
5 cabinet shall:

6 (a) Issue a letter of approval if the cabinet determines the amended property management  
7 plan meets the requirements of Section 1(7) of this administrative regulation; or

8 (b) Notify the applicant of required changes for approval.

9 (4) The applicant shall implement the amended property management plan upon approval  
10 of the cabinet. Implementation of the amended property management plan shall not occur until  
11 cabinet approval is obtained.

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401 KAR 102:020 approved for filing.

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Date

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Leonard K. Peters, Secretary  
Energy and Environment Cabinet

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Louanna Aldridge

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the general requirements for the property management plan and procedures for the cabinet to concur in writing that the future use of the property is in accordance with KRS 224.1-415(2)(b) as part of the Brownfield Redevelopment Program. The positive effects of the Property Management Plan include protection of human health and the environment, clarifying appropriate care of an environmentally impacted property and enabling a flexible approach that maximizes property value.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the general requirements for the property management plan and procedures for the cabinet to concur in writing that the future use of the property is in accordance with KRS 224.1-415(2)(b) as part of the Brownfield Redevelopment Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statute by establishing the requirements of the property management plan as part of the Brownfield Redevelopment Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the development of a Brownfield Redevelopment Program as established by KRS 224.1-415 by establishing the general requirements for the property management plan and the cabinet's concurrence as outlined in KRS 224.1-415(2)(b).

(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: The amendment to Section 1(6) of this administrative regulation was made to clarify that only information that is known by the applicant would be required in response to a comment received. Other amendments were made to meet the requirements of KRS 13A.

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

this regulation was necessary to clarify what information regarding institutional controls would be required of the applicant. Other amendments were necessary to meet the requirements of KRS 13A.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment of Section 1(6) of this administrative regulation conforms to the statute by clarifying the requirements for the property management plan required so that the cabinet may concur in writing that the future use of the property is in accordance with KRS 224.1-415(2)(b) as part of the Brownfield Redevelopment Program. Other amendments were made to meet the requirements of KRS 13A.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to Section 1(6) of this administrative regulation assists in the effectiveness of the administration of the statute by clarifying the requirements of an applicant for known institutional controls as a part of the Property Management Plan. Other amendments were made to meet the requirements of KRS 13A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation may impact individuals, businesses, and organizations statewide. The number of individuals or organizations that will be affected will be based on the number of applications received and complexity of the property management plans submitted as this is a voluntary program. This administrative regulation impacts the Division of Waste Management by creating the Brownfield Redevelopment Program.

(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: This administrative regulation will require no action by the individuals, businesses, or local governments as it is a voluntary program. The cabinet is required by KRS 224.1-415 to administer the Brownfield Redevelop Program. This administrative regulation outlines the general requirements of a property management plan and the cabinet's basis for concurrence.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation has no cost to individuals, businesses, or local governments as it is a voluntary program. Fees are established in another administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will provide entities that choose to participate a path for re-use in beneficially redeveloping environmentally impaired Kentucky without assuming responsibility for cleanup or characterization under KRS 224.1-400 and KRS 224.1-405. The positive effects of redeveloped properties include job creation, economic development, maximizing property value and tax base, and a positive impact on blighted properties. In addition, identification, re-use of a property through management of environmental issues, and any voluntary remediation effort by participants will increase the protectiveness of human health and the environment.

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

(a) Initially: The effort required for review of the application and property management plan will heavily dependent on the complexity of the property. The personnel costs for review of applications and property management plans are anticipated to range from \$740 to \$4000. The exact number of initial applications and property management plans cannot be determined; however, there is considerable interest in the program.

(b) On a continuing basis: The personnel costs for review of notifications and compliant property management will be heavily dependent on the complexity of the property. The personnel costs for review of notifications, verification of continued compliance, and review of amended property management plans are anticipated to range from \$420-\$1000 per year for each property that is managed under the program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cost associated with the implementation and enforcement of this program will be partially funded by the application fee established in 401 KAR 102:010. The additional costs of the program will be funded by restricted and federal funds.

(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 increase in funding will be necessary to implement this administrative regulation. The application fee established in 401 KAR 102:010 is considerate of the costs to the agency to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish a fee.

(9) TIERING: Is tiering applied? Tiering will not be applied. This administrative regulation treats all applicants the same.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 401 KAR 102:020  
Contact Person: Louanna Aldridge  
Phone number: 502-564-6716

(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? Cities, counties, fire departments and school districts will not be impacted directly by this administrative regulation. Redevelopment of impaired properties in Kentucky will benefit these entities with the creation of jobs, tax revenues, responsible management, and improved aesthetics. The Division of Waste Management will have an increased workload to administer the Brownfield Redevelopment Program as required by KRS 224.1-415.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.1-415.

(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.

(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? This administrative regulation will benefit state and local governments by creating increased tax revenues due to the redevelopment of properties within their jurisdiction. The amount of revenues generated will depend on the number of applications and property management plans received and cannot be determined at this time.

(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?

This administrative regulation will benefit state and local governments by creating increased tax revenues due to the redevelopment of properties within their jurisdiction. The amount of revenues generated will depend on the number of applications and property management plans received and cannot be determined at this time.

(c) How much will it cost to administer this program for the first year? The cost to administer the program will depend on the number of applications and property management plans received and cannot be determined at this time. However, there is considerable interest in

the program. It is anticipated that the average personnel costs to review each application received in the first year will be \$1,066. The application management, notification reviews, and property management plan reviews or amendments, if applicable during the first year, will depend on the complexity of the property and are unable to be determined at this time.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the program in subsequent years will depend on the number of applications and property management plans received and the complexity of the properties which cannot be determined at this time. However, there is considerable interest in the program. It is anticipated that each property that has been approved for the program will have average personnel costs of \$420 per year.

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: The exact fiscal impact will be dependent on the number of applications and property management plans received along with the complexity of the properties. The fiscal benefit to state and local governments will be increased jobs and tax revenues as a result of redevelopment. There will be an increased cost to state government to administer the program that will be partially funded by the fee proposed in another administrative regulation.