



STATEMENT OF CONSIDERATION RELATING TO

401 KAR 49:011 and 49:080
Amended After Comments

Environmental and Public Protection Cabinet
Department for Environmental Protection
Division of Waste Management

- (1) A public hearing on 401 KAR 49:011 and 49:080 was held on May 25, 2004, at 10:00 am at the Capitol Annex Room 125, Frankfort, Kentucky.
- (2) The following people attended this public hearing or submitted written or oral comments:

Attended public hearing:

<u>Name and Title</u>	<u>Affiliation</u>
Keith S. Hackett, Asst. Director	Metro Louisville Solid Waste Mgt. Dep.
Cass Harris, Env. Pgms. Admin.	Metro Louisville Solid Waste Mgt. Dep.
Gerald Hines, Solid Waste Enf. Officer	Pulaski County
Hank Marks, Analyst	Legislative Research Commission
Bryan Miles, Leg. Committee Chair	Solid Waste Coordinators of Kentucky
Robert Schindler, Director	Metro Louisville Solid Waste Mgt. Dep.
J.R. Williamson, Solid Waste Coordinator	Scott County

Submitted oral or written comments regarding the administrative regulation:

<u>Name and Title</u>	<u>Affiliation</u>
Sara Boyd, Judge/Executive	Lyon County
Tom FitzGerald, Director	Kentucky Resource Council
Laura Knoth, Director of Public Affairs	Kentucky Farm Bureau
George Lusby, Judge/Executive	Scott County
Bryan Miles, Leg. Committee Chair	Solid Waste Coordinators of Kentucky
Gary Moore, Judge/Executive	Boone County
Charles Peters	
Robert Schindler, Director	Metro Louisville Solid Waste Mgt. Dep.
Tommy Turner, President	Kentucky County Judge/Executive Assn.
John Underwood, Executive Director	Kentucky Auto and Truck Recycler Assn.

- (3) The following people from the promulgating administrative body attended this public hearing:

<u>Name and Title</u>	<u>Affiliation</u>
Sara Evans, Manager, RCLA	Division of Waste Management
Leslie King, Supervisor, RCLA	Division of Waste Management
Keith Sims, Supervisor, Louisville F.O.	Division of Waste Management
Brad Stone, Manager, PPA	Division of Waste Management
Michael Mullins, Env. Technologist	Division of Waste Management

Summary of Comments and Responses

- (1) **Subject Matter: Deletion of Language in Section 2 of 401 KAR 49:011.**

- (a) **Comment: Tom FitzGerald, Kentucky Resource Council.**

KRC is concerned with the deletion of language in existing Section 2(a) that requires the public notice of the plan or amendment to a plan to follow the Cabinet's format. If the intent is to continue to require use of a standardized format, the requirement must be contained in the regulation. If the intent is to allow the local solid waste governing body to develop its own public notice, then the regulation must specify minimum content requirements, such as a description of the proposed action, location where the existing plan and proposed change may be reviewed, procedures for submitting comments, and location of public hearing, etc. The preferred resolution would be to retain the existing language requiring publication of the standard format developed by the agency.

- (b) **Response:**

The cabinet concurs. The regulation has been changed in Section 2 (3) (c) to state: "The public notice shall include a description of the proposed action, location where the plan may be reviewed, procedures for submitting comments, and location of the public hearing."

- (2) **Subject Matter: Counties and Class 1 and Class 2 Cities in 401 KAR 49:011.**

- (a) **Comment: Bryan Miles, Solid Waste Coordinators of Kentucky (SWaCK); Gary Moore, Boone County; Sara Boyd, Lyon County; George Lusby, Scott County; Tommy Turner, Kentucky County Judge/Executive Association.**

The cabinet should insert language clarifying that the DEP Form 6062 applies to "counties and class 1 and class 2 cities" instead of agencies. This is suggested to maintain consistency with the most recent 5-year update.

- (b) **Response:**

The proposed language could help clarify the Area Designation update form. The form has been revised accordingly on page 43, "Attachment 1.3, Update of Area Designation".

- (3) **Subject matter: Plan Amendment in 401 KAR 49:011.**

- (a) **Comment: Bryan Miles, Solid Waste Coordinators of Kentucky (SWaCK); Gary Moore, Boone County; Sara Boyd, Lyon County; George Lusby, Scott County; Tommy Turner, Kentucky County Judge/Executive Association.**

The cabinet should define the term "Plan amendment". There are currently no guidelines for the type of changes that would require a formal plan amendment with or without a public hearing.

(b) Response:

Section 4(1) of the regulation states either the cabinet or the governing body can initiate a plan amendment process "if the current plan is inadequate because of new or revised information or to meet the requirements of KRS Chapter 224 and 401 KAR 49:011." Establishing a prescriptive definition or guideline could unduly restrict the ability to initiate a request for a Plan Amendment. The cabinet, therefore, contends no definition of plan amendment should be created.

(4) Subject matter: 90 Days for Deficiency Correction in 401 KAR 49:011.

(a) Comment: Tom FitzGerald, Kentucky Resource Council, Bryan Miles, Solid Waste Coordinators of Kentucky (SWaCK); Gary Moore, Boone County; Sara Boyd, Lyon County; George Lusby, Scott County; Tommy Turner, Kentucky County Judge/Executive Association.

The cabinet should revert to the original language stating the "The cabinet may grant the governing body up to 90 days to correct all deficiencies in the plan." If the deficiency correctly constitutes a plan amendment requiring the county to institute the 30-day comment process, more than 30 calendar days will be needed to correct the deficiency.

(b) Response:

Section 3(5) of the regulation allows three (3) notices of deficiency and thirty (30) days to respond to each notice of deficiency resulting in a total of ninety (90) days for the governing body to correct all deficiencies. This has no net effect on regulated entities; this amendment will bring this review process more in line with other cabinet protocols.

(5) Subject matter: Definition of "Projects That Generate Solid Waste" in 401 KAR 49:011.

(a) Comment: Bryan Miles, Solid Waste Coordinators of Kentucky (SWaCK); Gary Moore, Boone County; Sara Boyd, Lyon County; George Lusby, Scott County; Tommy Turner, Kentucky County Judge/Executive Association.

The cabinet should define "Projects that generate solid waste." There is concern that the current language construes inclusion of all projects such as road and construction, etc., not just solid waste related activities.

(b) Response:

The definition of solid waste, stated in KRS 224.01-010(31)(a), specifically excludes waste generated from debris resulting from a public road construction project.

(6) Subject matter: Effective Date of DEP Form 6061 in 401 KAR 49:011.

(a) Comment: Bryan Miles, Solid Waste Coordinators of Kentucky (SWaCK); Gary Moore, Boone County; Sara Boyd, Lyon County; George Lusby, Scott County; Tommy Turner, Kentucky County Judge/Executive Association.

The cabinet should make the effective date of DEP form 6061 January 2005. This request is due to the changes in the format and additional tracking, etc.

(b) Response:

This comment has been considered but the effective date of the form should remain the same as the regulation. The form is essentially the same as the form now in use by local governing bodies.

(7) Subject matter: Effective Date of DEP Form 6062 in 401 KAR 49:011.

(a) Comment: Bryan Miles, Solid Waste Coordinators of Kentucky (SWaCK); Gary Moore, Boone County; Sara Boyd, Lyon County; George Lusby, Scott County; Tommy Turner, Kentucky County Judge/Executive Association.

The cabinet should make the effective date of DEP form 6062 January 2005. This request is due to the changes in the format and additional tracking, etc.

(b) Response:

This comment has been considered but the effective date of the form should remain the same as the regulation. The form is essentially the same as the form now in use by local governing bodies.

(8) Subject matter: Fiscal Note of 401 KAR 49:011.

(a) Comment: Bryan Miles, Solid Waste Coordinators of Kentucky (SWaCK); Gary Moore, Boone County; Sara Boyd, Lyon County; George Lusby, Scott County; Tommy Turner, Kentucky County Judge/Executive Association.

The cabinet indicates "No change" in the fiscal note on the question of whether the regulation will have an effect on the expenditures and revenues of local government. SWaCK considers this incorrect. There will be increased costs associated with tracking, recordkeeping/documentation, data collection and staff time preparing the documents.

(b) Response:

HB 174 (2002) is the primary reason reporting costs have increased. This regulation merely clarifies the details already required in the statute.

(9) Subject Matter: Definitions in 401 KAR 49:080.

(a) Comment: Tom FitzGerald, Kentucky Resource Council.

KRC is concerned that the proposed definitions may not be consistent with the defined terms as used elsewhere under KRS Chapter 224, and may be inconsistent with KRS 224.43-505. In order to avoid potential conflicts with other permitting and enforcement-related definitions, Section 1 should be revised to read:

Section 1. Definitions. The following terms, as used in this regulation, shall have the meanings given in this section.

(b) Response:

This language is superfluous per the Regulations Compiler's interpretation of KRS 13A.222(4)(e).

(10) Subject Matter: Illegal Dump Definition in 401 KAR 49:080.

(a) Comment: Tom FitzGerald, Kentucky Resource Council.

The proposed definition of "illegal dump" is inconsistent with the statute, which provides funding for Cabinet elimination of "illegal open dumps." The definition and phrase as used in Section 5 must be modified to match statutory language.

(b) Response:

The proposed regulation has been amended to use the term "Illegal open dump" throughout in order to maintain consistency with the statute.

(11) Subject Matter: Waste Collector and Recycler Definitions in 401 KAR 49:080.

(a) Comment: Tom FitzGerald, Kentucky Resource Council.

The definitions of "waste collector" and "recycler" concern KRC because they do not appear to track KRS Chapter 224 distinctions, nor to include under the registration and reporting requirements all facilities that manage materials diverted from the waste stream.

A recycler is one engaged in recycling, which is defined in KRS 224.01-010 to include collection, separation or processing and reuse or returning to use in the form of raw materials or products. The limitation in the proposed regulation to private-sector reselling of collected recyclables, or public-sector collection of recyclables, is internally inconsistent and inconsistent as well with the statute. It is internally inconsistent since it would require municipalities to report on all recyclables collected and to register, but would not require registration or reporting from private-sector recyclers unless the recyclables are sold.

The acts of collecting, separating and processing materials for reuse that would otherwise constitute solid waste is recycling, and the definition of a recycler should be concurrent in scope, covering all solid waste and all recycling.

The regulation should be revised to state that any facility engaged in recycling and any recovered material processing facility, as those terms are defined in KRS 224.01-010, should register and report. This change would eliminate the need for defining "solid waste collector" since collection is one of several covered activities under "recycling."

(b) Response:

This regulation's definition of "recycler" has been amended after comments to specify that the requirement to register and report applies to those entities who recycle recovered material, as defined in KRS 224.010. The cabinet feels the commenter's proposed amendment would encompass a vast number of individuals and small volume recyclers that are beyond the intent of the original statute, HB 174 (2002).

(12) Subject Matter: Solid Waste Collector Definition in 401 KAR 49:080.

(a) Comment: Tom FitzGerald, Kentucky Resource Council.

Defining "solid waste collector" to mean only "municipal" solid waste collection is inappropriate since "solid waste" includes institutional, industrial and other wastes beyond MSW. The definition restricting "solid waste" to MSW could create adverse precedent, since there is nothing in 49:080 Section 1 limiting the applicability of the regulatory definition to 49:080 Section 2.

(b) Response:

Pursuant to KRS 224.01-010(31)(a)4, municipal solid waste includes household and commercial waste but not industrial waste. The registration and recycling form requires information on municipal solid waste collected from industrial sources to be included. Furthermore, KRS 224.43-315, which is referenced in 401 KAR 49:080, Section 2(5), governs "municipal solid waste collection program[s]."

- (13) **Subject matter: Definition of “City Streets” in 401 KAR 49:080.**
- (a) **Comment: Bryan Miles, Solid Waste Coordinators of Kentucky (SWaCK); Gary Moore, Boone County; Sara Boyd, Lyon County; George Lusby, Scott County; Tommy Turner, Kentucky County Judge/Executive Association.**
The definition of “City Street Cleanup” should be amended to be consistent with KRS 224.43-345(1)(g)4.
- (b) **Response:**
KRS 224.43-345 (1)(g)(4) requires the cleanup of litter along city streets two (2) times per year. This implies all city streets are to be cleaned two (2) times per year. The regulation establishes a city street cleanup to equal one-half of the total city street miles, thus resulting in the total number of city street miles being cleaned once a year.
- (14) **Subject matter: Definition of “In-kind Services” in 401 KAR 49:080.**
- (a) **Comment: Bryan Miles, Solid Waste Coordinators of Kentucky (SWaCK); Gary Moore, Boone County; Sara Boyd, Lyon County; George Lusby, Scott County; Tommy Turner, Kentucky County Judge/Executive Association.**
The definition of “In-kind Services” should include the use of volunteers and any expenses related to volunteer services”.
- (b) **Response:**
The definition states “ . . . the value of non-cash contributions provided by parties in the form of real property, equipment, supplies, and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.” Volunteer time is a service provided by an individual or group of individuals directly benefiting the project. Volunteer time meets the definition of “In kind services”. The term "expenses relating to volunteer services" is too vague. Some expenses may qualify under the definition of in-kind services, but only if "directly benefiting and specifically identifiable to the project or program," which is a determination that will have to be made on a case-by-case basis.
- (15) **Subject matter: Reporting Due Date in 401 KAR 49:080.**
- (a) **Comment: Bryan Miles, Solid Waste Coordinators of Kentucky (SWaCK); Gary Moore, Boone County; Sara Boyd, Lyon County; George Lusby, Scott County; Tommy Turner, Kentucky County Judge/Executive Association.**
The cabinet should amend the regulation to make the due date for the annual report date April 1st instead of February 1st.
- (b) **Response:**
The annual report due date, March 1st, is established in KRS 224.43-310, not this regulation.
- (16) **Subject matter: Definition of “Public Road Cleanup” in 401 KAR 49:080.**
- (a) **Comment: Bryan Miles, Solid Waste Coordinators of Kentucky (SWaCK); Gary Moore, Boone County; Sara Boyd, Lyon County; George Lusby, Scott County; Tommy Turner, Kentucky County Judge/Executive Association.**
The definition of “County Road Cleanup” should be amended to read:

“Public Road Cleanup” means the cleanup of litter along county roads within the county’s jurisdiction, excluding city street miles. A county that does not receive in any year an allocation from the Kentucky Pride Fund sufficient to complete the number of road cleanups provided for in this section shall not be deemed out of compliance.”

(b) Response:

KRS 224.43-500 defines a public road to mean any city, county, state, federal, or limited access street, highway, or turnpike, including bridges and bridge approaches. This approach is taken to maintain consistency with statute.

KRS 224.43-345 (1)(g) 4 requires the cleanup of litter along public roads three (3) times per year. This implies all public roads are to be cleaned three (3) times per year. The regulation establishes a public road cleanup to equal one-third of the total public roads miles, thus resulting in the total number of public road miles being cleaned each year.

The recommendation that language be added to indicate any county that doesn’t receive sufficient funding shall not be deemed out of compliance is repetitive. This requirement is stated specifically in KRS 224.43-345 (1)(g) 4. To restate it in the regulation would violate the drafting rules of KRS 13A.

(17) Subject matter: Direct Expenses for Litter Abatement in 401 KAR 49:080.

(a) Comment: Bryan Miles, Solid Waste Coordinators of Kentucky (SWaCK); Gary Moore, Boone County; Sara Boyd, Lyon County; George Lusby, Scott County; Tommy Turner, Kentucky County Judge/Executive Association.

Direct expenses should include costs associated with street sweeping activities and should not be focused on public road cleanup.

(b) Response:

The litter funds are to be used to meet the required litter cleanups along public roads as required in KRS 224.43-345. The intention of the funding is to expand litter abatement activities. The majority of litter along roadways is not in the paved area, but along the shoulder and is not removed by street sweepers.

(18) Subject matter: Direct Expenses and Leasing of Vehicles in 401 KAR 49:080.

(a) Comment: Bryan Miles, Solid Waste Coordinators of Kentucky (SWaCK); Gary Moore, Boone County; Sara Boyd, Lyon County; George Lusby, Scott County; Tommy Turner, Kentucky County Judge/Executive Association.

“Leasing” of vehicle should be included in the description of direct expenses. The cabinet has provided the counties with guidance, which indicates that leasing a vehicle is a direct expense.

(b) Response:

The cabinet has amended the regulation to allow leases, but only if the lease does not include a purchase option.

(19) Subject matter: Incorrect Statutory Reference in 401 KAR 49:080.

(a) Comment: Bryan Miles, Solid Waste Coordinators of Kentucky (SWaCK); Gary Moore, Boone County; Sara Boyd, Lyon County; George Lusby, Scott County; Tommy Turner, Kentucky County Judge/Executive Association.

The cabinet makes an incorrect statutory reference to KRS 224.43-505(2)(c)3.d. instead of KRS 224.43-505(2)(d)5.

(b) Response:

The cabinet concurs. The statutory reference is incorrect and has been deleted. Also, Section 7(2) and Section 3(4) have been amended to include the "Request for Litter Abatement Funding" document.

(20) Subject matter: County Road Cleanups in 401 KAR 49:080.

(a) Comment: Bryan Miles, Solid Waste Coordinators of Kentucky (SWaCK); Gary Moore, Boone County; Sara Boyd, Lyon County; George Lusby, Scott County; Tommy Turner, Kentucky County Judge/Executive Association.

Language in Section 4 (1) should read:

"Three (3) county road cleanups shall be performed annually by the county. A county that does not receive in any year an allocation from the Kentucky Pride Fund sufficient to complete the number of road cleanups provided for in this section shall not be deemed out of compliance."

(b) Response:

The definition of public road is defined in the statute. The recommendation that language be added to indicate any county that doesn't receive sufficient funding shall not be deemed out of compliance is repetitive. To restate it in the regulation would violate the drafting rules of KRS 13A.

(21) Subject matter: Dumps on Private Property in 401 KAR 49:080.

(a) Comment: Bryan Miles, Solid Waste Coordinators of Kentucky (SWaCK); Gary Moore, Boone County; Sara Boyd, Lyon County; George Lusby, Scott County; Tommy Turner, Kentucky County Judge/Executive Association.

The cabinet should amend the regulation to allow reimbursement for cleanup of dumps on private property.

(b) Response:

KRS 224.43-345 requires counties to identify an approved schedule for the cleanup of illegal dumps, which means all illegal dumps in existence. There is no distinction between public or private property dumps in the statute.

(22) Subject matter: Dump Reimbursement Cleanup in 401 KAR 49:080.

(a) Comment: Bryan Miles, Solid Waste Coordinators of Kentucky (SWaCK); Gary Moore, Boone County; Sara Boyd, Lyon County; George Lusby, Scott County; Tommy Turner, Kentucky County Judge/Executive Association.

The cabinet should amend Section 5(4)(b) to read, "Is in compliance with the solid waste management plan."

(b) Response:

To be eligible for illegal dump reimbursement, KRS 224.43-505 requires a county to have an effective universal collection service. An effective collection service is identified by the participation rate in the county's collection program. This language should remain as written in the regulation.

(23) Subject matter: Enforcement Powers in 401 KAR 49:080.

- (a) **Comment: Bryan Miles, Solid Waste Coordinators of Kentucky (SWaCK); Gary Moore, Boone County; Sara Boyd, Lyon County; George Lusby, Scott County; Tommy Turner, Kentucky County Judge/Executive Association.**
The cabinet should include the following definition:
“Enforcement Powers” means, at a minimum, issuance of a notice of violation using local ordinances.
- (b) **Response:**
As written, the regulation allows for the county to determine how the local ordinance will be structured that will govern solid waste coordinators’ enforcement powers. The cabinet contends these powers should be bestowed upon local solid waste coordinators through enactment of a local ordinance by local governments.
- (24) **Subject matter: Enforcement Officers in 401 KAR 49:080.**
- (a) **Comment: Bryan Miles, Solid Waste Coordinators of Kentucky (SWaCK); Gary Moore, Boone County; Sara Boyd, Lyon County; George Lusby, Scott County; Tommy Turner, Kentucky County Judge/Executive Association.**
The cabinet should clarify if the counties are able to employ an enforcement officer and still be eligible for reimbursement of funds.
- (b) **Response:**
The requirements of 401 KAR 49:080 Section 5 (4)(c)3 are considered met, if a county employs:
1. A solid waste coordinator and an enforcement officer, or
 2. A solid waste coordinator with enforcement powers.
- (25) **Subject matter: Recurrence of Illegal Dumps in 401 KAR 49:080.**
- (a) **Comment: Bryan Miles, Solid Waste Coordinators of Kentucky (SWaCK); Gary Moore, Boone County; Sara Boyd, Lyon County; George Lusby, Scott County; Tommy Turner, Kentucky County Judge/Executive Association.**
The cabinet should amend the regulation to say illegal dumps that recur after being remediated with assistance from the Kentucky Pride Fund more than two times shall not be eligible for reimbursement.
- (b) **Response:**
The cabinet concurs. The cabinet has changed Section 5 (5)(b) to read: “Illegal dumps that recur after being remediated more than two times with assistance from the Kentucky Pride Fund.”
- (26) **Subject matter: Litter Abatement Funding in 401 KAR 49:080.**
- (a) **Comment: Bryan Miles, Solid Waste Coordinators of Kentucky (SWaCK); Gary Moore, Boone County; Sara Boyd, Lyon County; George Lusby, Scott County; Tommy Turner, Kentucky County Judge/Executive Association.**
The cabinet should amend the Section 6 to read:
“Any county or incorporated city failing to comply with the terms of the agreement specified in 401 KAR 49:080 Section 3(4) shall be ineligible for dump reimbursement funding the following year unless a county or city can show just cause for not being able to eliminate all identified illegal dumps.”
- (b) **Response:**

Section 6, as written, is correct. Once the incorrect statutory cite is removed from Section 3 (4), Section 6 is correct as written.

(27) Subject matter: Fiscal Note for 401 KAR 49:080.

(a) Comment: Bryan Miles, Solid Waste Coordinators of Kentucky (SWaCK); Gary Moore, Boone County; Sara Boyd, Lyon County; George Lusby, Scott County; Tommy Turner, Kentucky County Judge/Executive Association.

This regulation will directly effect local government relative to increased costs associated with tracking, record keeping/documentation, data collection and staff time in preparing the documents, cleanup activities and enforcement. Reporting of litter abatement has and will increase the costs (staff time, tracking, etc.) in preparation of the Annual Report. The regulation in its current form can be interpreted to require counties to clean 100% of public road miles and cities to clean 100% of city streets. If funding is inadequate, counties and cities are then given the burden of proving this to the cabinet, resulting in an impact of increased costs.

(b) Response:

HB 174 (2002) is the primary reason reporting costs have increased. This regulation merely clarifies the details already required in the statute.

(28) Subject matter: Dump Characterization.

(a) Comment: Bryan Miles, Solid Waste Coordinators of Kentucky (SWaCK); Gary Moore, Boone County; Sara Boyd, Lyon County; George Lusby, Scott County; Tommy Turner, Kentucky County Judge/Executive Association.

Once the regulation passes will counties be required to complete 3 forms for every dump, found in the annual report guidelines (Form 6061).

(b) Response:

The dump characterization form and the cost estimate worksheet form is part of Form 6061. Page 10 of the Form 6061 has been amended to read, "A Dump Characterization Worksheet is required for each new dumpsite for this reporting period. The Cost Estimate Worksheet must be completed for the dumpsite to be reimbursed. Any dumpsite without a Cost Estimate Worksheet WILL NOT be considered for reimbursement."

(29) Subject matter: Accountability for Cities.

(a) Comment: Bryan Miles, Solid Waste Coordinators of Kentucky (SWaCK); Gary Moore, Boone County; Sara Boyd, Lyon County; George Lusby, Scott County; Tommy Turner, Kentucky County Judge/Executive Association.

Counties do not want to be held accountable for cities concerning litter abatement activities. Counties should not be issued a notice of deficiency, penalty or any other enforcement action relative to the activity or reporting of a city. The cabinet should address this in regulation.

(b) Response:

401 KAR 49:080 Section 4(4) requires cities to report to counties by February 1st. Further, Section 6 states that failing to comply with the terms of the agreement means that entity will be ineligible for litter abatement funding the following year. Thus, if a city fails to report to the county for reporting on the annual report, the city would not be eligible for litter abatement funding the next year and the county would not be held responsible for the cities failure to comply.

(30) Subject matter: Registration With The Cabinet in 401 KAR 49:080.

(a) Comment: John Underwood, Kentucky Auto and Truck Recyclers Association.

It is the belief of the Kentucky Auto and Truck Recyclers Association that 401 KAR 49:080 does not apply to the auto salvage industry, nor shall these same members be required to report under its provisions. Under the definitions in 401 KAR 49:080, this would apply to "Solid Waste Collectors" and "Recyclers". Both definitions are related to collection and reuse of items from the municipal solid waste stream. Under the definitions of KRS 109.012(9)(d), municipal solid waste does not include auto salvage operations, nor are they referenced in the legislative intent found in KRS 224.43-010.

(b) Response:

This regulation's definition of "recycler" has been amended after comments to specify that the requirement to register and report applies to those entities whose business is recycling recovered material, as defined in KRS 224.010. This means an entity must collect material from the waste stream and reuse it or return it to use as raw materials or a product. Auto salvage yards resell parts harvested from junked vehicles. This would not be considered recycling, since the items sold are not the reseller's products. Therefore, auto salvage yards that operate for the exclusive purpose of collecting motor vehicles or motor vehicle parts to be sold for reuse are exempt from the requirements of this administrative regulation. However, if these entities conduct recycling, such as the resale of recovered metals, then they would be required to register and report on this portion of their operation.

(31) Subject matter: Education Efforts in 401 KAR 49:080.

(a) Comment: Robert Schindler, Metro Louisville Solid Waste Management Department.

In Section 3 of 401 KAR 49:080 the regulation states that litter abatement funding can be used for "education activities focusing on public road cleanup." A strict reading implies that educational activities can relate only to the advertising of cleanup activities or events. The cabinet should clarify the intent.

(b) Response:

KRS 224.43-505 is very specific that the litter funds are to be used to increase awareness and develop education strategies to keep the county free of litter and illegal open dumps. The intent of the funding was to expand litter abatement activities, not fund existing programs.

(32) Subject matter: Road Cleanup Definitions in 401 KAR 49:080.

(a) Comment: Robert Schindler, Metro Louisville Solid Waste Management Department.

The cabinet should clarify if the counties are required to cleanup every mile of every road every year or are they to clean a number of miles equivalent to the total road miles in a county.

(b) Response:

KRS 224.43-345 (1)(g) 4 requires the cleanup of litter along public roads three (3) times per year. This implies all public roads are to be cleaned three (3) times per year. The

regulation establishes a public road cleanup to equal one-third of the total public roads miles, thus resulting in the total number of public road miles being cleaned each year.

(33) Subject Matter: Intergovernmental Review in 401 KAR 49:011

(a) Comment: Laura Knoth, Kentucky Farm Bureau.

Could a non-endorsement of an intergovernmental review affect an agricultural project? Kentucky Farm Bureau believes a non-endorsement should not be permitted to hold up the progress on an agriculture related project.

(b) Response:

The non-endorsement is triggered only for projects that generate solid waste, and is mandatory per KRS 224.43-340(11).

(34) Subject Matter: Annual Report Form in 401 KAR 49:011

(a) Comment: Charles Peters.

Can the Annual Report Form (DEP number 6061) be reviewed for consolidation, specifically recycler information and adding information concerning open dumps remaining?

(b) Response:

The annual report has been reviewed by the cabinet for consolidation and the addition of information regarding dumps has been added.

Summary of Statement of Consideration and Action Taken by Promulgating Body

The written and verbal comments received by June 1, 2004, by the cabinet and summarized in the previous sections were considered in the development of 401 KAR 49:011 and 401 KAR 49:080.

401 KAR 49:011

Page 3

Section 2(3)(a)

Line 3

After "format;" delete "and"

Page 3

Section 2(3)

Line 5

After "plan" delete "."

After "plan" insert "; and"

Page 3

Section 2(3)

Lines 6, 7, and 8

After "plan" insert the following:

(c) The public notice shall include a description of the proposed action, location where the plan may be reviewed, procedures for submitting comments, and location of the public hearing.

Page 4

Section 3(5)

Line 15

After "of" insert:

and failure of the governing bodies to respond to

401 KAR 49:080

Page 1

Section 1(3)

Line 16

After "Illegal" insert "open"

Page 2

Section 1(6)

Lines 4 and 5

After "of" insert the following:

recycling recovered material as defined in KRS 224.01-010(20)

After "of" delete "reselling recyclables"

Page 2
Section 1(6)
Lines 6 and 7

After “stream” insert the following:
excluding any business operated for the exclusive purpose of collecting motor vehicles or motor vehicle parts to be sold for reuse

Page 2
Section 1(6)
Line 9

After “collecting” insert the following:
recovered material as defined in KRS 224.01-010(20)
After “collecting” delete “recyclables”
After “the” insert “municipal”

Page 3
Section 3(2)
Line 12

After “purchase” insert “of a motor vehicle.”
After “vehicle” insert the following:
, when the lease includes a purchase option.

Page 3
Section 3(4)
Lines 16, 17, and 18

After “cities” insert:
shall complete and return a “County Request for Litter Abatement Funding” document to
After “cities” delete:
“must enter an agreement with”
After “cabinet” delete “pursuant to KRS 224.43-505(2)(c)3d”

Page 4
Section 5(1)
Lines 8 and 10

After “illegal” insert “open”

Page 4
Section 5(2)
Line 12

After “illegal” insert “open”

Page 4
Section 5(2)
Lines 15 and 16

After “purchase” insert “of a motor vehicle.”

After “vehicle” insert the following:
, when the lease includes a purchase option.

Page 4
Section 5(4)(b)
Line 23

After “illegal” insert “open”

Page 5
Section 5(5)
Line 11

After “illegal” insert “open”

Page 5
Section 5(5)(a)
Line 12

After “illegal” insert “open”

Page 5
Section 5(5)(b)
Line 13

After “illegal” insert “open”

After “remediated” insert “more than two times”

Page 5
Section 7
Lines 18 and 19

After “Reference.” insert:

The following material is incorporated by reference:

Page 5
Section 7(1)
Line 21

After “(January 2004)” insert “;”

After “(January 2004)” delete “is incorporated by reference.”

Page 5
Section 7(2)
Line 22

After “(January 2004)” insert:

(2) “County Request For Litter Abatement Funding (July 2004)”.

Page 6
Section 7(3)
Line 1

After “(January 2004)” delete “(2)”

After "(January 2004)" insert "(3)"