

## **PROPOSED EXPANSION FOR WASTE PATH SANITARY LANDFILL**

**Kentucky Division of Waste Management**

**Information Packet for Marshall County Refuse District**

June 2018

- Host Community Compensation – Q&A for Marshall County
- Host Community Agreements – Fact Sheet
- Legal Considerations – Statutory Requirements
- Guidance Document for Host Counties – Authorizing Capacity
- Guidance for Local Determination and Plan Amendments – Instructions and Forms
- Certification for Local Determination – Form
- Annual Authorized Capacity Report – Form
- Headlines of Interest – Legal Disputes and the Need for Long-term Planning

For more information about the local determination process for proposed facility expansions, please contact:

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For more information about solid waste facility permits and the requirement for public notification and participation of citizens in the decision-making process, please contact:

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## **HOST COMMUNITY COMPENSATION AND MUNICIPAL SOLID WASTE LANDFILLS**

Questions and Answers for Marshall County - June 2018

### **What is a host community agreement?**

A host community agreement is a legally-binding contract made between landfill developers and communities in order to establish monetary payments, in-kind services, and other perks that benefit the community in exchange for permission to construct, operate and/or expand a landfill.

### **Why negotiate a host community agreement?**

- To protect the community and to prevent bad publicity with the landfill.
- To ensure equitable compensation for the entire community.
- To establish the rights and responsibilities of both the community and the landfill.
- To reinforce the community's right to control the waste coming into their solid waste district.
- To identify the amount, types and sources of waste allowed for disposal at the landfill.

### **Who is responsible for developing the host community agreement?**

- KRS 109.041 sets out the powers vested in the county for solid waste management. KRS 109.115 states "Waste Management districts shall have all powers and authority set forth in KRS 109.041." Those powers include all other powers enumerated in KRS Chapter 67 and other sections of the Kentucky Revised Statutes, counties, acting by and through their fiscal courts, may own and hold the permit for, plan, initiate, acquire, construct, and maintain solid waste management facilities, enter into contracts or leases with private parties for the design, construction, or operation of a publicly-owned solid waste management facility, and adopt administrative regulations with respect thereto in accordance with this chapter.
- KRS 224.43-345 1(l) states that a governing body of the solid waste management area/district shall make the local determination. Per this statute, the local governing body of the solid waste management board has the legal right and responsibility to control the amount of waste to be disposed of in landfills within their community by authorizing capacity.
- KRS 68.178 enables communities to impose a license fee on off-site waste management facilities. Per this statute, local government and solid waste management boards have the right and responsibility to ensure that their communities receive compensation for permission to construct, operate and/or expand a landfill.
- KRS 224.43-345 1(o) requires solid waste management areas/districts to establish a public information and participation process to include the public in the decision-making process for solid waste management, including the local site approval process for solid waste disposal facilities.

### **What are some issues to be aware of when re-opening negotiations?**

- FACILITY FEES – Revenue from license fees should benefit the entire community.
- ZONING ISSUES – Local site approval and/or zoning permits must be obtained.
- SOURCES OF WASTE – Tonnage from out-of-area sources must be tracked and reported.
- TYPES OF WASTE – Fees may vary depending on types of waste disposed of at the facility.
- TONNAGE AMOUNTS – Tonnage from all waste sources must be tracked and reported.

**WASTE DISPOSAL: Community Host Agreements**

Jan. 2018 ~ Local Planning and Assistance Fact Sheet 21

**COMMUNITY HOST AGREEMENTS: COMPENSATION FOR THE COUNTY**

The purpose of a Host Community Agreement is to compensate the community in exchange for permission to construct and operate a landfill. Although technology has improved, the burdens associated with landfills can include noise, odors, increased truck traffic, and long-term environmental and economic liabilities. For these reasons, a community has every right to negotiate a contract with provisions to assure financial compensation and minimize environmental risks. This contract, known as a **Community Host Agreement**, is made between the solid waste facility owner and the local community where the facility is located.

**RECOMMENDED PROVISIONS FOR COMMUNITY HOST AGREEMENTS:****FACILITY OBLIGATIONS:**

- ♦ **Permits**— Landfill shall obtain necessary permits in accordance with local, state and all other applicable environmental laws.
- ♦ **Reserved Capacity**— Landfill shall reserve sufficient airspace for in-area waste for the host county. \*Note: Counties are required to obtain capacity assurance for a 10-year period.
- ♦ **Guarantee of Disposal**—Landfill shall agree to dispose of the county's waste at another legal facility at no additional cost to the county in the event that the facility closes, fails to reserve adequate airspace, or for any other reason is unable to accept waste.
- ♦ **Limits on Disposal Amounts**—Landfill shall agree to limitations set by the county on the disposal amounts of *all types of non-hazardous solid waste* allowed at the facility through the end of the contract. Limitations should include special wastes and industrial wastes, along with residential and commercial waste. Overall cap on the tonnage/cubic yardage of all waste is identified in the county's Solid Waste Management Plan as authorized capacity. Authorized capacity gives local government the authority to determine how much out-of-area waste is allowed at the landfill. Although authorizing capacity is effective in controlling total waste amounts, it does not specify sources of waste nor does it cover industrial and special wastes. An amount agreed upon and outlined in the Host Agreement (usually expressed as an annual limit and average daily limit) is legally binding and it helps to support the authorized amount identified in the county's Solid Waste Management Plan.
- ♦ **Restrictions of Certain Wastes**—Landfill shall agree to not accept certain types of wastes as specified by the county. Counties can negotiate the prohibition of wastes such as untreated potentially infectious medical wastes, testing of industrial solid and limited quantity hazardous waste streams, benzene-contaminated soils, and NORM radioactive wastes. A prohibition of sewage sludge and benzene-contaminated soil as alternate daily cover should also be considered.
- ♦ **Agreements for Total Footprint, Maximum Elevation and Minimum Buffer Zone**

**WASTE DISPOSAL: Community Host Agreements***Jan. 2018 - Local Planning and Assistance Fact Sheet 21***RECOMMENDED PROVISIONS FOR COUNTY HOST AGREEMENTS: (CONT.)**

- ♦ **Limitation on Service Area**—Landfill shall agree to a specified service area set by county.
- ♦ **Limitation on Operating Hours**
- ♦ **Agreement to Allow Local Solid Waste Personnel to Monitor, Inspect and Sample**
- ♦ **Agreement to Provide a List of Industrial and Commercial Waste Generators to the County**
- ♦ **Agreement to Provide Records**—The landfill shall provide copies of all reports, records of wastes received, and sampling logs provided to the state. The landfill shall also provide a copy of the permit for public review.
- ♦ **Agreement to Allow Review and Comment**—The landfill shall allow the County the right to review and comment on any permitting action.
- ♦ **Sufficient Leak-Detection and Groundwater Monitoring**
- ♦ **Agreement for Land-Use Upon Closure of Site**
- ♦ **Agreement for Extended Closure Obligations and Liability**
- ♦ **Establishment of a Post-Closure Fund and Financing for Perpetual Cap Maintenance**
- ♦ **Agreement to Low or No-Cost Collection and Disposal of Waste Generated in the County**
- ♦ **Provision for Free Collection or Roll-Off Dumpsters for Reduction/Recycling Activities**
- ♦ **Provision of Free Landfill Airspace for Disposal of Illegal Dump Clean-up Wastes**
- ♦ **A Program for Free Collection of White Goods, Tires, HHW, etc.**
- ♦ **Replacement of Water Supply Upon Determination of Contamination or Loss**
- ♦ **Process for Arbitration of Disputes with Nearby Landowners**
- ♦ **Liquidated Damage Formula for Violations of Host Agreement**
- ♦ **Access Route Controls and Obligations for Road Maintenance**
- ♦ **Provisions for Performance Standards for Decibel Noise Levels**
- ♦ **Agreement to Implement a Property Value Protection Programs**
- ♦ **Provisions for Addressing Traffic, Ingress, Egress, Litter Control, and Odor**
- ♦ **Agreement to Term, Insurance and Financial Responsibility, Default and Remedies**
- ♦ **Agreement to Submit to and Comply with Local Siting Ordinances**
- ♦ **Agreement to Pay County Host Fees on Disposal as Specified by County**
- ♦ **Inclusion of a Clause**—Landfill should indemnify the community from any claims made against the community for its' disposal of waste at the landfill or any other claims related to the design, construction, use, operation or closure.

**WASTE DISPOSAL: Community Host Agreements***Jan. 2018 - Local Planning and Assistance Fact Sheet 21***RECOMMENDED PROVISIONS FOR COUNTY HOST AGREEMENTS: (CONT.)**

- ♦ **Inclusion of a Clause**—Agreement to be effective for any successors or assigns of the landfill and a right to prior notification and approval for any transfer of the permit or landfill ownership.
- ♦ **Identification of the Term of the Agreement**—Counties should make their host agreement terms consistent with their Solid Waste Management Plan Updates (every 5 years). This would synchronize the renegotiated terms with at the same time that the county again determines the capacity of waste to be authorized and approved in the Plan.

**COUNTY OBLIGATIONS:**

- ♦ **Cooperation and Compliance with the Law**—County shall agree to cooperate with the Company with respect to the permitting and development of the facility.
- ♦ **Zoning and Land Use**—County shall confirm and represent that no zoning and/or other land use law or restriction exists under the current ordinances.
- ♦ **No County Funds**—Excepting for the payment of Tipping Fees for acceptance for processing and disposing County Waste and the Facility, the normal and customary operation expenses, legal expenses and incidental expenses incurred by the County in connection with the Agreement, the County shall not be required to provide any manner of financing for the permitting, development, construction or operation of the Facility.
- ♦ **Local Taxes**—County shall agree that the Facility Site and all improvements be assessed at their fair market value. All vehicles and equipment owned by the Facility will be registered and taxed in the usual manner.

**\*NOTE:** The provisions outlined above for both the facility and the county are merely suggestions and recommendations. Any County entering into an agreement with a landfill should seek necessary legal services to draft the contract and provide legal representation.

Host Agreements are negotiated between local government and the company owner. In addition to the details of the host fee and monetary compensation, Host Agreements should address all issues associated with economic, aesthetic, social and environmental impacts of a landfill on the community.

**WASTE DISPOSAL: Community Host Agreements**

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Community Host Agreements help to balance the development and expansion of landfills with the needs and costs to the community. During the 1980s and 1990s, strong local opposition to the siting and construction of solid waste landfills became commonplace. This attitude toward development became known as the "Not In My Back Yard" principle. To ease the siting process and address local opposition, landfills began offering monetary payments and other perks to benefit the community. These offers, known as "host community compensation" or "host fees," consist of cash payments or in-kind gifts that are paid to a community by the developer for the right to site a landfill within the community's jurisdiction.

**Source:**

U.S. Environmental Protection Agency. 2002. *Host Community Compensation and Municipal Solid Waste Landfills*. National Center for Environmental Economic Working Paper Series.

**Regulations and Statutes Relevant to Authorized Capacity, License Fees for Solid Waste Facilities and**

- ♦ KRS 224.40-315
- ♦ KRS 224.43-310
- ♦ KRS 224.43-345
- ♦ KRS 067.080
- ♦ KRS 068.178

For a complete listing of solid waste laws and to view statutes and regulations, please visit the Kentucky Legislature website at:

<http://www.lrc.state.ky.us/>

**References:**

<http://www.epa.gov>

<http://waste.ky.gov>

<http://waste.ky.gov/RLA>

**FOR MORE INFORMATION: Contact the Local Assistant Assigned to Your Area Development District (ADD)**

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**Kentucky Department for Environmental Protection  
Division of Waste Management  
Recycling and Local Assistance Branch  
Local Planning and Assistance Section  
[Waste.ky.gov](http://Waste.ky.gov)**

This document was developed by the Local Assistance Section. Information in this fact sheet is offered only as a guidance. Reliance of information from this document is not for use in enforcement actions or litigation. Please refer questions about regulatory requirements to the Local Assistance staff for further information.

**Solid Waste Management Planning Statutes**  
**Legal Reference for County Attorneys and Local Planning Officials**

**KRS 65**

- KRS 65.180 Definition of Taxing District
- KRS 65.182 Procedures for Creating Taxing District

**KRS 67**

- KRS 67.076 Use of county ordinance and resolution
- KRS 67.080 Powers of Fiscal Court
- KRS 67.710 Powers and duties of county/judge executive

**KRS 68**

- KRS 68.178 County License Fee for Off-site Waste Management Facilities
- KRS 68.604 Taxing District – Ad Valorem Tax and Occupational License Tax

**KRS 109s**

- KRS 109.011 Responsibility of Counties and Waste Management Districts
- KRS 109.012 Chapter Definitions
- KRS 109.041 County Powers for Solid Waste Management
- KRS 109.0417 Procedures for Local Government to Change Solid Waste Service Providers
- KRS 109.056 Tax Levy for Waste Management District
- KRS 109.082 Contracts between Counties for Solid Waste Management
- KRS 109.115 Establishment and Powers of Waste Management Districts
- KRS 109.120 Rules and Regulations of Board
- KRS 109.190 Status of Existing Districts
- KRS 109.260 City Solid Waste Management Services
- KRS 109.270 Establishing a Waste District by Petition and Election
- KRS 109.310 Collection of Solid Waste Pick-up Fees – Combination with Property Tax

**KRS 224s**

- KRS 224.40-315 Responsibility of Counties to Complete a Local Determination
- KRS 224.43-010 Responsibility of Counties to Oversee Solid Waste Practices
- KRS 224.43-310 Responsibility of Counties to Report In-Area and Out-of-Area Waste Disposal
- KRS 224.43-330 Responsibility of Facility to Report In-Area and Out-of-Area Waste Disposal
- KRS 224.43-340 Requirement to Designate a Solid Waste Management Area
- KRS 224.43-345 Requirement of County/District to Implement a Solid Waste Management Plan
  - Inventory of all existing facilities
  - In-area waste generation projection
  - Capacity assurance for in-area waste for 10 years
  - Capacity authorized for out-of-area waste
  - Siting procedures for locating, developing and financing facilities
  - Recycling and reduction programs
  - Litter and dump cleanup programs

***\*Highlighted statutes should be carefully considered when siting solid waste management facilities and negotiating fees and terms of host community agreements.***

## **GUIDANCE DOCUMENT FOR HOST COUNTIES AUTHORIZING CAPACITY FOR MUNICIPAL SOLID WASTE DISPOSAL FACILITIES**

### **PURPOSE**

The purpose of this document is to provide information that will assist county officials with the process of planning for adequate and reasonable disposal capacity. Although adequate capacity currently exists for Kentucky's counties, it is important for local officials to plan for future development, protect public interest and conserve resources by exercising their authority to negotiate contracts with landfill developers and set limits for out-of-area waste by authorizing capacity.

### **BACKGROUND**

Kentucky's current solid waste planning process, developed in the early 1990s, requires all counties to designate a Solid Waste Management Area (SWMA) and develop a Solid Waste Management Plan (SWMP). SWMPs include the following components: collection services, disposal of municipal solid waste, cleanup of litter and illegal dumps, recycling programs, enforcement, facility siting procedures and public education/participation programs. The governing body of the SWMA must implement the components of the SWMP and update it every 5 years. The 5-year Update must evaluate progress, set goals and identify changes in planning areas such as solid waste generation. With respect to waste generation and disposal capacity, counties must identify current and future disposal needs in their 5-year Updates. Each county must also provide assurance that disposal facilities are available to dispose of their waste for a 10 year period. In addition to ensuring adequate disposal capacity for in-area waste for a 10 year period, counties that host landfills must identify additional capacity authorized for out-of-area waste.

### **AUTHORITY**

#### **KRS 224.40-315**

- (1) [No permit to construct or expand a municipal solid waste disposal facility shall be accepted...unless the application contains a determination from the governing body for the solid waste management area in which the facility is or will be located concerning the consistency of the application with the area solid waste management plan...]
- (2) [No permit to construct or expand a municipal solid waste disposal facility shall be approved unless...the application conforms to and is consistent with...
  - a. The capacity needs identified in the area solid waste management plan...]

#### **KRS 224.43-345**

- (1) [Each area solid waste management plan shall be prepared ....and include the following:
  - b. A demographic study...projection of the amount and source of solid waste generated...]
  - i. Specific provisions to assure that adequate capacity for a ten (10) year period shall be available for municipal solid waste generated in the solid waste management area, and identification of any additional capacity authorized for disposal of out-of-area waste.

#### **KAR 49:011 Section 4 5 (b)**

- 4 (5) b [Solid waste plan amendments....require public information process... that:
  - 4 Establishes a new solid waste facility; expands the size or capacity of an existing facility.
  - 5 Expands the size or capacity of an existing facility.



## DEFINITIONS

1. **Area Capacity Needs** – The landfill capacity needed by a solid waste management area (usually the county) to meet existing and projected waste generation. Capacity needs, including authorized capacity for host counties, are identified in Chapter 3 of Solid Waste Management Plans.
2. **Capacity Assurance** – Assurance provided by a landfill or multiple landfills to a county that adequate capacity is available for disposal of the county's projected waste amounts for a 10 year period.
3. **Flow Control** – Legal provisions made by state and local governments to designate where municipal solid waste is taken for processing, treatment or disposal. Flow control requires waste haulers to transport waste to a designated site. Flow control is typically used by municipally-owned facilities, but can be addressed in service contracts with privately-owned facilities. Kentucky cities and counties can establish flow control in their ordinances. Flow control is not the same as authorizing capacity.
4. **Governing Body** – The local authority of a solid waste management area. The governing body can be Fiscal Court or a 109 Waste Management Board.
5. **Host Agreement** – An agreement or contract between a solid waste management facility and the local community where the facility is located. Host Agreements are intended to address host fees and other benefits that a community can negotiate for allowing the facility to locate in their area. Host Agreements can establish terms and conditions beyond state regulatory standards such as: restrictions on types of waste, sources of waste, reserved capacity for county waste, set limits for per day and/or per year disposal amounts, overall caps on the total tonnage/cubic yardage of all waste to be disposed of at the facility, assistance with community education, assistance with cleanup events, recycling programs, free collection and disposal for county facilities and fees to be paid to the county. \*Host Agreements are likely to be considered as a "privilege" or "franchise". Government franchises/privileges require notice, bidding and a 20-year maximum duration under the Kentucky Constitution.
6. **Local Determination** – The requirement of the governing body of a solid waste management area (usually the county) to determine if the siting or expansion of a landfill within their area is "consistent" with the Solid Waste Management Plan. The volume of municipal solid waste proposed for the site must be consistent with the authorized capacity in the solid waste management plan.
7. **Public Participation Process** – The process of involving the public in the decision-making process of siting a new solid waste facility or expanding an existing solid waste facility. The top five solid waste concerns of the public include: out-of-area waste, landfill siting, mandatory collection, regional management vs. local management and waste reduction/recycling.
8. **Solid Waste Management Area (SWMA)** – The designation of a specific area (county, multi-county or 109 Waste Management District) for purposes of managing municipal solid waste on the local level.
9. **Solid Waste Management Plan (SWMP)** – A plan for managing all aspects of municipal solid waste within a solid waste management area. The plan evaluates existing solid waste programs and services, sets goals for improving solid waste programs and services, and identifies the community's needs for managing solid waste. SWMPs are updated every five years and can be amended at any time.
10. **Total Authorized Capacity** – The capacity authorized for waste disposal for a 10 year period by a county with a contained landfill. If a county hosts a landfill, then the governing body has the authority to determine the total capacity authorized for disposal in the county for a 10 year period. In-area waste must take priority; out-of-area waste accounts for the additional capacity authorized.
11. **Total Disposal to Date (Used Capacity)** – Total volume of municipal solid waste disposed at a facility over the life of the permit. (Based on quarterly reports or annual surveys submitted to SWB)
12. **Total Remaining Authorized Capacity** – Total amount of capacity authorized by county after subtracting used capacity. (Based on SWMPs and Local Determination documents)
13. **Total Remaining Permitted Capacity** – The total capacity in cubic yards remaining for a permitted landfill. (Based on Annual Surveys submitted to SWB)

## PLANNING vs. PERMITTING CAPACITY

PLANNING CAPACITY	PERMITTING CAPACITY
Authorized by County in Solid Waste Management Plan	Determined by State in Solid Waste Landfill Permit
Identified by Tons of Waste	Identified in Cubic Yards
Decided by Local Officials and Public	Finalized by Permit Reviewers
Location Approved by Local Planning and Zoning	Permit Requirements Decided by Engineers/Geologists
Host Agreements – Local Contract Intended to Protect Community	Financial Disclosures/Bond – Permit Requirement Intended to Protect Community
Pro's = Source of Revenue for County	Pro's = Permitted Site for Waste Disposal
Con's = Potential Risk and Nuisance to County	Con's = Potential for Unnecessary Development

## ISSUES

1. Authorized capacity for out-of-area waste is difficult to determine without flow control.
2. Excessive authorized capacity results in high volumes of waste from outside Kentucky.
3. Capacity assurance from a landfill is not a binding contract with a county.
4. Waste haulers are not necessarily restricted to use a specific landfill.
5. Current figures for "Remaining Authorized Capacity" show discrepancies.
6. Remaining authorized capacities are a carryover from SWMPs and SWMP Amendments.
7. Counties often confuse "remaining authorized capacities" with "remaining permitted capacities".
8. Counties tend to have outdated or poorly written host agreements.

## RECOMMENDATIONS FOR HOST COUNTIES

1. Conduct a thorough review of previous and current Area Solid Waste Management Plans.
2. Identify the dates for all capacity authorizations for solid waste disposal facilities.
3. Verify the authorized capacity as noted in the current SWMP or Community Host Agreement.
4. If the "remaining authorized capacity" exceeds 20 years of life for the permitted facility, then counties should be aware of the following:
  - a. KRS 224.345 references the need for counties to estimate the long-range needs for 5, 10 and 20 years of waste generation;
  - b. Landfills typically plan for a 20-year operation;
  - c. Under Kentucky Constitution, a government entity cannot enter into contract, award "privilege" or agree to a "franchise" for more than a 20 year duration.

**KENTUCKY DIVISION OF WASTE MANAGEMENT**  
**LOCAL ASSISTANCE SECTION**  
**Solid Waste Management Plan Amendments**  
***Guidelines, Forms and Protocol***  
Updated 3-1-18 – LT

**Purpose:** The purpose of this document is to provide agency staff, local governing bodies of solid waste management areas (SWMA) and the general public with guidance on procedures associated with solid waste management plan (SWMP) amendments, consistency reviews, local determination, public participation process involved with siting, constructing, expanding and modifying solid waste disposal facilities. Protocols for these activities include sequential tasks conducted by both solid waste management areas and Kentucky Division of Waste Management (DWM) programs involving local assistance and permit review.

**\*Note:** Please note that activities related to plan amendments, permit reviews and siting facilities are circumstantial and often controversial. Plan amendment and permit approvals may be contingent upon local ordinances, public response, fiscal court proceedings, and/or determinations made by DWM staff.

**Background:** Generally, any entity seeking to make a change, requesting to site or expand a facility or otherwise proposing an amendment to an approved SWMP must first submit a formal request to the local governing body of the SWMA. The local governing body then notifies DWM/RLA that a potential amendment has been initiated. The process of amending a plan involves tasks associated with the SWMA governing body, citizens of the SWMA and DWM/RLA; therefore, this document is written to address procedures as it relates to all three entities. There are two forms that must be completed during the process and there are a series of public notices, public hearings and formal resolutions that may or may not be required pending approval by DWM/RLA. The forms and templates for documenting the amendment process are listed below:

**Forms:**

<i>Form A</i>	<i>Application to Amend Area Solid Waste Management Plan</i>
<i>Form B</i>	<i>Public Notice for Plan Amendment</i>
<i>Form C</i>	<i>County Resolution for Approving Amendment</i>
<i>Form D</i>	<i>City Resolutions Supporting County Amendments</i>
<i>Form E</i>	<i>Public Notice for Consistency Determination</i>
<i>Form F</i>	<i>Resolution for Determination of Consistency/Inconsistency</i>
<i>Form G</i>	<i>Documentation for Completion of Amendment</i>
<i>Form H</i>	<i>Letter to Deny Amendment Proposal</i>
<i>Letter</i>	<i>Letter from Cabinet Overriding Determination by Local Governing Body</i>

**Definitions:**

**Amendment to SWMP** – Any proposed change to an approved solid waste management plan during the 5-year update planning period. SWMAs must notify DWM of proposed amendments.

**Capacity Assurance** – A requirement for SWMAs to assure space at a landfill or multiple landfills for a minimum of 10 years. SWMAs must submit capacity assurance letters in each 5-year update to their SWMP.

**Capacity Authorized (Total)** – The total amount of tonnage (space) allowed by a SWMA for a host landfill.

**Capacity Remaining** – The amount of space (volume and years) remaining in a landfill.

**Collection box** – *KRS 224.1-010* An unmanned receptacle to used to collect municipal solid waste.

**Consistency Review** – A review of the current SWMP to determine if the content in an amendment proposal (i.e. content of a permit application or RPBR registration) is consistent with the content of the SWMP. Reviews may involve RPBRs, minor or major modifications to permits, permits for new solid waste facilities, revised ordinances, changes to facilities, etc.

**Convenience Center** - *KRS 224.1-010* A facility that is manned during operating hours for the collection and subsequent transportation of municipal solid wastes.

**CDD Landfill** – A landfill permitted to accept construction/demolition and debris.

**Modification to Add/Delete Sources** – A modification to a permit or Registered Permit by Rule registraion (whereby waste sources from geographic areas are added or deleted. Modifications for add/deleter sources. require a consistency review and potentially a SWMP amendment.

**Local Determination** – A determination from the governing body of a solid waste management area that a proposed facility is consistent with the area solid waste management plan. *As per KRS 224.40-315, all permit applications to construct or expand a solid waste management facility, must contain a local determination by the SWMA that the proposed facility is consistent with the plan. In other words, if the proposed facility is not referenced in the SWMP, then it is inconsistent and the SWMA must work through a public participation process. First, the local governing body must publicize the proposal and request for consistency with the SWMP and subsequently adopt a resolution for determination of consistency/nonconsistency. Second, if the application is consistent with the plan, then the applicant can move forward for review by DWM. Third, if the application is inconsistent, then the governing body can adopt a resolution not to allow it to be consistent or the governing body and pursue a plan amendment.*

**Local Siting Procedures** – The requirements made by a local governing body with respect to siting a solid waste facility within the SWMA. Siting procedures are generally enforced through a siting ordinance or zoning ordinance and often require a petition to the local governing body as the first step in the process.

**Municipal Solid Waste Disposal Facility** – Any type of waste site or facility where the final destination of any amount of municipal solid waste occurs.

**Public Participation Process** – Process of public notification, public hearing and response to comments in an effort to involve the public in the decision-making process with respect to siting solid waste facilities.

**Transfer Facility – KRS 224.1-010** – Any transportation related facility including loading docks, parking areas, and other similar areas where shipments of solid waste are held or transferred during the normal course of transportation. Transfer stations are considered “collection systems” as it is not a permanent disposal site.

**RPBR** – Registered Permit by Rule are registrations that are required for transfer stations, convenience centers, recycling centers and medical waste transfer stations. These facilities must submit an RPBR registration to DEP-DWM-SWB as per KRS 224.01-010. Registrations become effective 5 days after the cabinet receives them (except medical waste transfer stations which become effective 30 days after receipt) unless the cabinet denies the registration within that time.

**Solid Waste Disposal Facility – KRS 224.1-010**

**Solid Waste Management - KRS 224.1-010** the administration of solid waste activities; collection, storage, transportation, transfer, processing, treatment, and disposal, which shall be in accordance with a cabinet-approved county or multicounty solid waste management plan.

**Solid Waste Management Facility – KRS 224.1-010** Any facility for collection, storage, transportation, transfer, processing, treatment, or disposal of solid waste, whether such facility is associated with facilities generating such wastes or otherwise, but does not include a container located on property where solid waste is generated and which is used solely for the purpose of collection and temporary storage of that solid waste prior to off-site disposal, or a recovered material processing facility which is subject to regulation pursuant to the chapter for control of environmental impacts and to prevent any public nuisance.

**Waste site or facility - KRS 224.1-010** Any place where waste is managed, processed, or disposed of by incineration, landfilling, or any other method, but does not include a container located on property where solid waste is generated and which is used solely for the purpose of collection and temporary storage of that solid waste prior to off-site disposal, or a recovered material processing facility, or the combustion of processed waste in a utility boiler.

## **Amendment Process**

**Note:** The amendment process varies depending on the circumstances of the proposed change. Two processes by which to approach amending a SWMP are outlined below. Basically, the steps to amending a SWMP always involves a consistency review, but may or may not involve public notices and local determination.

**Note:** A consistency review (by DWM ) between the approved SWMP and the permit application is performed on all permits for contained landfills, all modifications to permits for adding or deleting sources; all RPBRs for new or modifications to facilities. Upon completing the review, RLA must write a memo to the SWB to verify that the local SWMA is aware of the modification.

**Note:** A consistency review (by DWM) between the approved SWMP and the proposed change as noted in *Form A - Application to Amend Area Solid Waste Management Plan*, is performed on all amendment proposals. Upon completion of the review, RLA must notify the SWMA how to proceed with amendment.

**Note:** Most SWMP amendments require additional pages or replacement pages to identify the change, such as a new program, facility or service. It is not necessary to change all subsequent page numbers in the SWMP. If additional pages are added; simply place "a, b, c ... etc." after the appropriate page number.

## **Amendment Process for Changes to SWMPs during 5-YEAR Planning Period**

1. SWMA either proposes or is presented with a proposal to amend the SWMP. If the proposal is to site or expand a municipal solid waste disposal facility (as defined in KRS 224.01-010) then follow the steps outlined under Amendment Process for Siting or Expanding a Solid Waste Facility in this document.
2. SWMA reviews the proposal and makes determination about whether or not local ordinances, siting procedures or zoning issues will conflict with the proposal.
3. If the SWMA determines that the proposal should receive further consideration, then they should complete and submit *Form A - Application to Amend Area Solid Waste Management Plan* to DWM/RLA.
4. DWM/RLA reviews Form A, and completes a consistency review with the approved SWMP. DWM must respond to SWMA within 30 days and advises how to proceed with proposal.
5. DWM/RLA will notify SWMA if a 30-day Public Notice is necessary *OR* if no further steps are necessary to incorporate the proposed amendment. **Note:** Requirements for public notice(s) and resolution(s) for potential amendments involving solid waste disposal facilities depends on the type of facility, location of the facility (on-site or off-site of the solid waste generator), and the content of the approved SWMP.

- 7
6. If a public notice is not required and no further steps are necessary, then the SWMA amends the appropriate pages and submits them to DWM. Both SWMA and DWM insert the new pages into the official (now amended) copy of the SWMP. Both the SWMA and DWM keep an amended copy on file. DWM enters the amended pages and documents pertaining to the amendment under the approved SWMP gray bar in TEMPO.
  7. If a 30-day public notice is required, then the SWMA must make the proposed amendment available for public review. SWMA uses Form B and publishes the notice in a local newspaper at least 30 days prior to a scheduled public hearing date. The public notice must be verified by affidavit for Form G.
  8. If the public notice prompts a request from the public, then the SWMA must hold a public hearing.
  9. After considering public opinion, if the SWMA decides to approve the proposed amendment, then a Resolution (Form C and D) must be passed by the SWMA governing body, county and/or city. The SWMA will then submit Form G to DWM for final review.
  10. Or After considering public opinion, if the SWMA decides not to approve the proposed amendment, then Form H and G informing DWM that the proposed amendment was not approved must be submitted along with all other information to DWM for final review.
  11. DWM will notify SWMA when the review and amendment process is complete. All paperwork is filed with the approved SWMP kept on file with DWM and SWMA.

### **Amendment Process for Siting or Expanding a Solid Waste Disposal Facility**

1. SWMA is presented with a proposal or permit application to site, expand or change the services of a solid waste disposal facility in the SWMA. SWMA has 60 days to respond.
  - a. **Note:** Requirements for public notice(s) and resolution(s) for potential amendments involving siting or expanding solid waste disposal facilities depends on the type of facility, location of the facility (on-site or off-site of the solid waste generator), and the content of the approved SWMP.
  - b. **Note:** The definition of "solid waste disposal facility" means a contained landfill; construction/demolition debris landfill except for a landfill for the disposal of sand, soil, rock, gravel, bridge debris, and other materials extracted as part of a public road construction project funded wholly or in part with state funds; residual landfill; solid waste incinerator; waste to energy facility; or a hazardous waste incinerator, landfill, or other site or facility for land disposal of hazardous waste.
  - c. **Note:** The definition of a "Registered permit-by-rule" (RPBR) means a category of solid waste sites

including commercial recycling centers, transfer stations, construction/demolition debris landfills of (1) acre or less, when the wastes are not disposed at the site of generation; solid waste incinerators that have a rated capacity of more than (1) ton per day including those that use refuse derived fuel; sludge giveaway programs, composted sludge and other composted material programs in accordance with 401 KAR 48:200; land farming of class I sludge, septic tank pumping if in compliance with the Cabinet for Human Resources administrative regulations and the waste is not applied to within (3) feet of the surface of the land unless a method to reduce pathogens has been utilized in accordance with 401 KAR 48:200; and convenience centers.

2. SWMA begins process to determine if the proposal is consistent or inconsistent with the approved SWMP.
3. SWMA runs a public notice for seven days to announce the 30-day public comment period. (Form E).
4. SWMA allows for a public hearing if requested and responds to comments within 15 days of the close of the public comment period.
5. After the public notice and public hearing is completed, the SWMA passes a formal resolution (Form F).
6. If the Resolution is consistent, then the plan may be amended and the proposed siting or permit application may proceed to the next phase. All documentation is submitted with Form G to DWM for a final review.
7. DWM completes the review and notifies SWMA that the review and amendment process is complete. Both SWMA and DWM insert the new pages into the official (now amended) copy of the SWMP. Both the SWMA and DWM keep an amended copy on file. DWM enters the amended pages and documents pertaining to the amendment under the approved SWMP gray bar in TEMPO.
8. If the Resolution is Inconsistent, then the SWMA has two options:
  - a. Submit the Resolution Determining Inconsistency to DWM.
    - i. If DWM agrees with the inconsistent determination, then the amendment process is halted at the local level and the plan will not be amended. Consequently, DWM will not accept a facility permit.
    - ii. If DWM disagrees with the inconsistent determination, then the amendment process can continue provided that the Cabinet submits a written statement explaining why it did not accept the local governing body's determination. Consequently, the plan may be amended.
  - b. Pursue amending the SWMP to make the proposal/ permit application consistent with the SWMP. If this is decided, then the SWMA will have to submit another public notice and pass another resolution as outlined in the steps below. If the SWMA decides to pursue amending the plan to achieve consistency, then these steps must be followed:



- i. The SWMA must make the proposed amendment available for public review. A public notice (Form B) must be published in a local newspaper at least 30 days prior to the scheduled public hearing date. The public notice must be verified by affidavit.
- ii. The SWMA must hold a public hearing if requested.
- iii. After considering public opinion, if the SWMA decides to approve the proposed Amendment, then a Resolution (Form C, D) must be passed by the SWMA governing body, county and/or city. The SWMA will then submit all documentation and Form G to DWM for final review.
- iv. Or After considering public opinion, if the SWMA decides not to approve the proposed amendment, then Form H informing DWM that the proposed amendment was not approved must be submitted along with all other information and Form G to DWM for final review.
- v. DWM will notify SWMA when the review and amendment process is complete. All paperwork is filed with the approved SWMP kept on file with DWM and SWMA.

## APPLICATION TO AMEND AREA SOLID WASTE MANAGEMENT PLAN

I. Name of Solid Waste Management Area: \_\_\_\_\_

Name of Governing Body Chairperson: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name of Contact Person: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_

Telephone: \_\_\_\_\_

II. Please provide a brief statement about the proposed amendment and the pages of the current Solid Waste Management Plan that will be updated if the amendment is approved.

Nature of Amendment and page(s) affected:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

III. Attach a separate page for a formal description of the proposed amendment outlining: justification, desired outcome, implementation schedules and financial accountability.

IV. Signature of Governing Body Chairperson \_\_\_\_\_

V. Date \_\_\_\_\_

**PUBLIC NOTICE FOR PLAN AMENDMENT  
(Template)**

The Governing Body of [insert name] County will conduct a public comment period to consider amending the Area's Solid Waste Management Plan. The proposal was submitted to the Kentucky Environmental and Public Protection Cabinet, Division of Waste Management, in accordance with KRS 224.43-340 and 401 KAR 49.011, Section 4 (attached). If approved, the amendment would revise the [insert name] County Area Solid Waste Management Plan by:

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The proposed plan amendment is available for public inspection beginning [month, day, and year] at the following locations during their normal business hours:

\_\_\_\_\_ County Judge/Executive's/109 Board Chairperson's office, [street address].

\_\_\_\_\_ County Solid Waste Coordinator's office, [street address].

\_\_\_\_\_ County Public Library (name of city), [street address].

\_\_\_\_\_ City Hall, [street address].

Additional information about the proposed plan amendment is available from [insert contact name], [insert name] County Solid Waste Coordinator (and/or governing body chair), at [phone number]. Anyone unable to review the plan at the above locations may call and request that a copy of the relevant pages be mailed to them.

Any person wishing to comment on the plan amendment may do so by providing comments no later than close of business on the 30<sup>th</sup> day of the public notice, Month, Date, Year, to the [insert name] County Fiscal Court at [street address]. Any person wishing to be heard at a public hearing must make a request via telephone [insert phone number] or fax [insert phone number], email [insert email address for either or both the swc and j/e] or written communication, to the governing body identified above, no later than close of business (COB) on the 30th day.

A public hearing is scheduled on Month, Date, Year at [insert time], to receive public comments on the plan amendment. The hearing will be held in the [insert name] County Courthouse in the the Fiscal Courtroom at [street address]. If the [insert name] County Fiscal Court receives no requests for a public hearing, the public hearing may be cancelled.

The [insert name] Fiscal Court will respond to written comments within 15 days of the close of the public comment period, Month, Date, Year, and will consider the proposed plan amendment and will take action determining the amendment at the Month, Date, Year [insert name] County Fiscal Court meeting.

**COUNTY RESOLUTION APPROVING AMENDMENT # \_\_\_\_\_**  
**(Template)**

A resolution approving the submission of [insert name] County's application to amend the [insert name] County Area Solid Waste Management Plan and adopting the amendment(s) as public noticed.

**WHEREAS:** The Governing Body of [insert name] County, based on updated information on the area's solid waste management practices, and acting on behalf of its citizens, is amending the [insert name] County Area Solid Waste Management Plan; and

**WHEREAS:** The Governing Body of [insert name] County is acting pursuant to KRS 224.43-340 that requires every county in the Commonwealth of Kentucky to formally adopt any change(s) in its solid waste management practices; and

**WHEREAS:** The Governing Body of [insert name] County will revise the Area Solid Waste Management Plan and is eligible to amend and implement such revision(s).

**NOW THEREFORE, BE IT RESOLVED** by the Governing Body of [insert name] County, Kentucky, as follows:

[insert name] County published a thirty day public notice and [held/did not hold] a public hearing (if requested). Consideration was given to oral/written comments for the proposed amendment(s), and the governing body elects to pass a resolution outlining the changes to the [insert name] County Area Solid Waste Management Plan.

**SECTION I.** Having reviewed the amendments to the [insert name] County Area Solid Waste Management Plan, the Governing Body of [insert name] County approves the following (list amendments):

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Enacted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
 Governing Body Chairperson

[Insert name] County, Kentucky

**CITY RESOLUTION SUPPORTING COUNTY AMENDMENTS**  
**(Applies to 1<sup>st</sup> and 2<sup>nd</sup> Class Cities Only)**  
**(Template)**

A resolution adopting amendments to the [insert name] County Area Solid Waste Management Plan and recognizing [city name] as a part of the [name] County Area Solid Waste Management Area.

**WHEREAS:** The City of [insert name] finds it to be in their best interest to amend the waste management program(s) pertinent to the City of [insert name] to assure its citizens a healthful and environmentally safe place to live and work.

**NOW THEREFORE BE IT RESOLVED** by the City Council of [insert name], [insert name] County, Kentucky, as follows:

**SECTION I.** Having reviewed the amendments to the [insert name] County Area Solid Waste Management Plan, the [insert name] City Council hereby approves the following (list amendments):

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Enacted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Mayor of [insert name]

[Insert name] County, Kentucky

**PUBLIC NOTICE FOR CONSISTENCY DETERMINATION WITH AREA SOLID WASTE MANAGEMENT PLAN  
(Template)**

The [insert name] County [Fiscal Court/109 board] is seeking public comment on the issue of consistency with the \_\_\_\_\_ County area solid waste management plan regarding the Application/Notice of Intent received by the governing body on [date]. The Application/Notice of Intent received from [applicant's name] outlines the proposed [construction and/or expansion] of a municipal solid waste disposal facility known as [name of facility].

[applicant's name]'s proposal is to **CONSTRUCT** a [contained landfill/ off-site residual landfill/ greater than one acre construction demolition/debris landfill/incinerator/waste-to-energy] facility with a proposed ten-year capacity of \_\_\_\_\_ tons and airspace volume of \_\_\_\_\_ cubic yards.

**AND/OR**

[applicant's name]'s proposal is to **EXPAND** a [contained landfill/off-site residual landfill/greater than one acre construction demolition/debris landfill/incinerator/waste-to-energy] facility with a proposed ten-year capacity of \_\_\_\_\_ tons and airspace volume of \_\_\_\_\_ cubic yards.

Pursuant to KRS 224.40-315, the [insert name] County [Fiscal Court/109 board] will make a determination of consistency after public notice and opportunity for public comment and hearing.

The Application/Notice of Intent and the [insert name] County area solid waste management plan are available for public inspection at the following locations during their normal business hours: *List locations here with name of office and street address – suggest the county list the county j/e's/109 Board/ solid waste coordinator's office as well as the local library or city hall.*

Additional information about the Application/Notice of Intent is available from *list the judge/109 Board/ solid waste coordinator* at [insert phone number]. Anyone unable to review the Application/Notice of Intent and/or the relevant pages of the area solid waste management plan at the above locations may call and request that a copy be mailed to them.

Any person wishing to comment on the consistency determination may do so by providing comments no later than close of business on the 30<sup>th</sup> day of the public notice, *(The public notice shall run a minimum of seven (7) days)*, Month, Date, Year, to the [insert name] County Fiscal Court at [street address]. Any person wishing to be heard at a public hearing must make a request via telephone [insert phone number] or fax [insert phone number], email [insert email address for either or both the swc and j/e] or written communication, to the governing body identified above, no later than close of business (COB) on the 30<sup>th</sup> day.

A public hearing is scheduled on Month, Date, Year *(can schedule for the last day of the public notice (it must be after close of business if scheduled for the 7<sup>th</sup> day), the day after the end of the public notice period or the next working day)* at [insert time] to receive public comments on the consistency determination. The hearing will be held in the [insert name] County Courthouse at the Fiscal Courtroom at [street address]. If the [insert name] County Fiscal Court receives no requests for a public hearing, the public hearing may be cancelled.

The [insert name] Fiscal Court will respond to written comments within 15 days of the close of the public comment period, Month, Date, Year, and will consider the proposed consistency determination and take action at the Month, Date, Year [insert name] County Fiscal Court meeting.

**RESOLUTION FOR DETERMINATION OF CONSISTENCY/INCONSISTENCY**  
**(Template)**

WHEREAS: The County/City of [insert name], based on the Notice of Intent dated [date] from [applicant's name] request to issue a determination of consistency with the [insert name] County Area Solid Waste Management Plan, pursuant to KRS 224.40-315(1), to [construct/increase] the tonnage/volume of airspace for the [contained landfill/off-site residual landfill/greater than one acre construction demolition/debris landfill/incinerator/waste-to-energy] facility; and

WHEREAS: The total capacity [requested/authorized] for the *newly constructed* [contained landfill/off-site residual landfill/greater than one acre construction demolition/debris landfill/incinerator/waste-to-energy] facility is \_\_\_\_\_ tons (\_\_\_\_\_ cubic yards) and;

AND/OR

WHEREAS: The proposed [expansion request/authorization] will *increase* the [contained landfill/off-site residual landfill/greater than one acre construction demolition/debris landfill/incinerator/waste-to-energy] facility by \_\_\_\_\_ tons (\_\_\_\_\_ cubic yards); and

WHEREAS: The proposed request is [consistent/inconsistent] with the area solid waste management plan; and

WHEREAS: The [insert name] County [Fiscal Court/109 board] published the Public Notice required by KRS 224.40-315(1) on [date], and scheduled a public hearing on [month, day, year]; and

WHEREAS: The [insert name] County [Fiscal Court/109 board] has considered the request for consistency filed by [applicant's name], and oral comments [were/were not] received at the public hearing conducted on [date], and written comments [were/were not] received during the public comment period provided in the Public Notice;

NOW, THEREFORE, BE IT RESOLVED that the [insert name] County [Fiscal Court/109 board], as the governing body for the [insert name] County Solid Waste Management Area, hereby determines that the [applicant's name]'s request is *consistent* with the [insert name] County Area Solid Waste Management Plan; because:

- A. The [insert name] County [Fiscal Court/109 board], after due consideration and review, formally amended the plan to allow for the [construction/expansion] of the [contained landfill/off-site residual landfill/greater than one acre construction demolition/debris landfill/incinerator/waste-to-energy] facility.
- B. The [insert name] County [Fiscal Court/109 board] authorized a total capacity, \_\_\_\_\_ tons for a \_\_\_\_\_ year period for the [construction/expansion] of the [contained landfill/off-site residual landfill/greater than one acre construction demolition/debris landfill/incinerator/waste-to-energy] facility.
- C. The [insert name] County [Fiscal Court/109 board], after due consideration and review, determines the [applicant's name]'s request is included in the [insert name] County area solid waste management plan.

OR

NOW, THEREFORE, BE IT RESOLVED that the [insert name] County [Fiscal Court/109 board], as the governing body for the [insert name] County Solid Waste Management Area, hereby determines that the [applicant's name]'s request is *inconsistent* with the [insert name] County Area Solid Waste Management Plan; because:

- A. The [insert name] County [Fiscal Court/109 board], after due consideration and review, determines the [applicant's name]'s request is not included in the [insert name] County area solid waste management plan.
- B. The [insert name] County [Fiscal Court/109 board], after due consideration and review, intends to conduct a 30 day public notice period to consider amending the [insert name] County area solid waste management plan to include the [construction/expansion] of the [contained landfill/off-site residual landfill/greater than one acre construction demolition/debris landfill/incinerator/waste-to-energy] facility.

OR

- B. The [insert name] County [Fiscal Court/109 board], after due consideration and review, declines to formally amend the [insert name] County area solid waste management plan to include [applicant's name] request citing restrictions in [insert name] County solid waste management ordinance, number \_\_\_\_ [and/or] citing restrictions based on Section \_\_\_\_ of the solid waste management plan ordinance number \_\_\_\_ [and/or] citing restriction based on the [insert name] County Siting ordinance number \_\_\_\_ [and/or] based on the [insert name] Planning and Zoning ordinance number \_\_\_\_.

Enacted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Governing Body Chairperson

[insert name] County, Kentucky



**DOCUMENTATION FOR COMPLETION OF AMENDMENT FOR  
AREA SOLID WASTE MANAGEMENT PLAN**

**Name of Solid Waste Management Area:** \_\_\_\_\_

**Governing Body responsible for plan implementation:**

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Contact Person Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Email:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

**[insert name]** County is submitting the enclosed information to be included as a part of the **[insert name]** County Area Solid Waste Management Plan.

**Please check off the following enclosures:**

\_\_\_\_\_ Two copies of the solid waste management plan page replacements.

\_\_\_\_\_ Two copies of the public notice advertising the amendment review **[and/or]** two copies of each public notice determining consistency with the area solid waste management plan. The public notice should consist of a tear sheet (whole page) of the newspaper and a copy of the article OR two copies of the public notice with an original and one copy with an affidavit from the newspaper verifying publication dates.

\_\_\_\_\_ Original and one copy of action(s) by the governing body approving the amendments and/or consistency determinations.

\_\_\_\_\_ Original and one copy of the letter informing the division the proposed amendment was not approved.

\_\_\_\_\_ Original and one copy of action(s) approving the amendments by first or second class city legislative bodies that have developed their portion of the plan.

\_\_\_\_\_ Agreements or contracts (if any).

\_\_\_\_\_ Proposed rules; regulations or by-laws (if any).

\_\_\_\_\_ Supporting documents.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governing Body Chairperson  
**[insert name]** County, Kentucky

**Letter to Deny Amendment Proposal  
(Template)**

Date \_\_\_\_\_

Department for Environmental Protection  
Division of Waste Management  
Recycling and Local Assistance Branch  
[insert address]  
Frankfort, Kentucky 40601 42420

RE: Amendment Proposal for \_\_\_\_\_ [insert name] County, Solid Waste Management Plan

Dear Ms./Mr. :

The [insert name] County [Fiscal Court/109 board], after due consideration and review, declines to formally amend the [insert name] County area solid waste management plan to include [applicant's name] proposal and/or siting request: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The [insert name] County [Fiscal Court/109 board], determined a number of significant public concerns that factored into the decision. The following concerns support our decision to deny the amendment: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
[insert name] Governing Body Chairperson  
County, Kentucky

Kentucky Department for Environmental Protection  
Division of Waste Management  
Recycling and Local Assistance Branch  
Local Planning and Assistance Section  
300 Sower Boulevard  
Frankfort, Kentucky 40601  
(502) 564-6716

For Official Use Only  
Do Not Write in this Space

### **CERTIFICATION FOR LOCAL DETERMINATION**

#### **PURPOSE:**

Kentucky's solid waste planning process requires all counties to designate a Solid Waste Management Area (SWMA) and develop a Solid Waste Management Plan (SWMP). Accordingly, all counties have the right and responsibility for making decisions regarding solid waste for their communities, including the siting and expansion of municipal solid waste disposal facilities. Siting or expansion of these types of facilities begins with local government in a process called local determination. Local determination requires public participation as well as a review of the SWMP, siting ordinance, zoning requirements, land use regulations, contractual agreements, host community agreements, and any other pertinent documents.

#### **AUTHORITY:**

**KRS 224.40-315** specifies that no permit to construct or expand a municipal solid waste disposal facility shall be accepted for processing by the cabinet unless the application contains a determination from the governing body of the SWMA concerning the consistency of the application with the area's SWMP. Specifically, the proposal must be consistent with the capacity needs, applicable zoning regulations, and other elements identified in the SWMP.

**KRS 224.1-010 (14) and KRS 224.40-315 (4)** defines municipal solid waste disposal facilities as residual, contained and greater-than-one-acre construction/demolition debris landfills, as well as incinerators and waste to energy facilities that burn industrial solid waste.

**KRS 224.43-340 and KRS 224.43-345** requires all Kentucky counties to address the municipal solid waste needs for their area for a minimum of 20 years and make provisions to assure that landfill capacity is available for a 10-year period for disposal of in-area municipal solid waste. In addition to procuring adequate disposal capacity for in-area waste for a 10-year period, counties with municipal solid waste disposal facilities must identify authorized capacity for out-of-area municipal solid waste.

#### **INSTRUCTIONS:**

\* Completion of local determination is the first step in the permitting process. The *Certification for Local Determination* form, along with other required local determination documents, must be submitted to the address below prior to submitting a Notice of Intent to construct or expand a municipal solid waste disposal facility.

\* Completion and certification of this form is required by both the owner/applicant of the facility as well as the local governing body of the SWMA in which the facility is located or proposed.

\* Supplemental instructions for this form and other related forms are included in *Instructions and Forms for Local Determination*. All local determination forms and guidance documents are available on the Kentucky Department for Environmental Protection website at: <http://dep.ky.gov/formslibrary/Pages/default.aspx>.

\* For assistance in completing this form and guidance with local determination, please contact the Local Planning and Assistance Section at 502-564-6716.

Local Planning and Assistance Section  
Division of Waste Management  
300 Sower Blvd, 2<sup>nd</sup> Floor  
Frankfort, KY 40601  
Phone: (502) 564-6716  
Fax: (502) 564-4245

## **I. CONTACT INFORMATION: Applicant/Owner**

*Section I is to be completed by the applicant/owner of the proposed or existing facility.*

Name of Applicant: \_\_\_\_\_

Name of Person Completing Form: \_\_\_\_\_

Name of Facility: \_\_\_\_\_

Permit Number or Agency Interest #: \_\_\_\_\_

Date Application/Proposal Delivered: \_\_\_\_\_

Type of Facility (check one): ☐ Contained ☐ Residual ☐ Waste to Energy ☐ Greater than 1 Acre CDD

## **II. CERTIFICATION OF LOCAL DETERMINATION: Applicant/Owner**

*Section II is to be completed by the applicant/owner of existing or proposed facility. Please check any of the following actions that were completed during the local determination process.*

- ☐ A written proposal for siting/expansion was delivered to the local governing body of the SWMA.
- ☐ A public notification for siting/expansion was advertised (if required by local siting procedures).
- ☐ A public hearing was conducted and responses to comments were provided (if required by local siting procedures).
- ☐ All requirements for local ordinances and siting procedures have been met.
- ☐ All requirements for zoning and land use regulations have been met.
- ☐ A host community agreement/contract was negotiated or renegotiated (if required by local governing body).
- ☐ Information regarding proposed capacity was provided to the local governing body.
- ☐ Information regarding proposed service areas and sources of waste was provided to the local governing body.
- ☐ Information regarding proposed waste types to be accepted by the facility was provided to the local governing body.

### **CERTIFICATION**

*"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for such violations."*

\_\_\_\_\_  
Authorized Signatory (print)

\_\_\_\_\_  
Original Signature

\_\_\_\_\_  
Date

**III. CONTACT INFORMATION: Solid Waste Management Area (County/109 District)**

*Section III is to be completed by the Solid Waste Management Area (County or 109 District).*

Name of County or 109 District: \_\_\_\_\_

Name of County Judge/Executive: \_\_\_\_\_

Name of 109 Board Chairperson: \_\_\_\_\_

Name of Solid Waste Coordinator: \_\_\_\_\_

Name of Person Completing Report: \_\_\_\_\_

Date Application/Proposal Received: \_\_\_\_\_

Location for Proposed/Existing Facility: \_\_\_\_\_

Local Siting Process (check all that apply): ☐ Siting Ordinance ☐ Planning and Zoning ☐ Land Use Regulations

**IV. HOST COMMUNITY AGREEMENT or CONTRACTUAL AGREEMENT (if applicable)**

*Section IV is to be completed by the Solid Waste Management Area (County or 109 District). If the County has entered into a host community agreement or other type of contractual agreement with the facility, please provide a brief description for any applicable provisions below. Attach copies of all contractual agreements referenced in this section.*

Date of Agreement/Contract: \_\_\_\_\_

Term of Agreement/Contract: \_\_\_\_\_

Host Community Fees/License Fees: \_\_\_\_\_

Tonnage Cap: (Total tonnage capacity authorized by the county for waste disposal): \_\_\_\_\_

Annual Tonnage: (Total amount of waste allowed for disposal during a calendar year): \_\_\_\_\_

Waste Flow Tonnage: (Total amount of waste allowed for daily disposal): \_\_\_\_\_

Waste Sources: (Service area for acceptable waste to be transported and disposed): \_\_\_\_\_

Waste Types: (Restrictions and/or prohibited waste types): \_\_\_\_\_

Monitoring for Waste Loads Received for Disposal: \_\_\_\_\_

Traffic, Access Routes, Road Maintenance: \_\_\_\_\_

Control Measures for Odor: \_\_\_\_\_

Control Measures for Dust: \_\_\_\_\_

Control Measures for Noise: \_\_\_\_\_

Operational Hours: \_\_\_\_\_

Records and Reporting: \_\_\_\_\_

Any Other Provisions or Special Circumstances: (community perks, specific rules for industrial waste, etc.):  
\_\_\_\_\_

**V. CERTIFICATION OF LOCAL DETERMINATION: Solid Waste Management Area (County/109 District)**

*Section V is to be completed by the Solid Waste Management Area (County and 109 District). Please check each of the following actions that were completed during the local determination process.*

- ☐ Proposed siting/expansion was reviewed by the County (and 109 Board if applicable).
- ☐ Proposed siting/expansion met the requirements of local siting ordinances.
- ☐ Proposed siting/expansion met the requirements of zoning and/or land use regulations.
- ☐ Proposed siting/expansion met the requirements for public notification and participation per KRS 224.43-345.
- ☐ Host Community Agreements were negotiated or renegotiated.
- ☐ Consistency/Inconsistency with the SWMP was determined and recognized in a Resolution by the governing body.

**Outcome of Local Determination: CONSISTENT**

- ☐ Proposed siting/expansion was determined to be *CONSISTENT* with the SWMP.
- ☐ Applicant was notified by County/109 Board of the outcome of the local determination (within 60 days of proposal).
- ☐ All documentation verifying *CONSISTENCY* have been prepared for submittal to the Division of Waste Management.

**Outcome of Local Determination: INCONSISTENT (OPTION 1)**

- ☐ Proposed siting/expansion was determined to be *INCONSISTENT* with the SWMP.
- ☐ Applicant was notified by County/109 Board of the outcome of the local determination (within 60 days of proposal).
- ☐ All documentation verifying *INCONSISTENCY* have been prepared for submittal to the Division of Waste Management.

**Outcome of Local Determination: INCONSISTENT (OPTION 2)**

- ☐ Proposed siting/expansion was determined to be *INCONSISTENT* with the SWMP.
- ☐ County/109 Board elected to *AMEND* the *SMWP* to make the proposed siting/expansion *CONSISTENT*.
- ☐ Applicant was notified by County/109 Board of the outcome of the local determination (within 60 days of proposal).
- ☐ All documentation relating to the *AMENDMENT* have been prepared for submittal to the Division of Waste.
- ☐ All documentation verifying *INCONSISTENCY* have been prepared for submittal to the Division of Waste Management.

**CERTIFICATION**

*"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for such violations."*

\_\_\_\_\_  
Authorized Signatory (Judge/Executive) (Print) Original Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Signatory (109 Chairperson) (Print) Original Signature

\_\_\_\_\_  
Date

Kentucky Department for Environmental Protection  
Division of Waste Management  
Recycling and Local Assistance Branch  
Local Planning and Assistance Section  
300 Sower Boulevard  
Frankfort, Kentucky 40601  
(502) 564-6716

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### **ANNUAL AUTHORIZED CAPACITY REPORT**

#### **PURPOSE:**

All Kentucky counties are required to make specific provisions to assure available landfill capacity for solid waste generated within their area. Along with procuring adequate capacity for in-area waste, counties with solid waste disposal facilities must also identify additional capacity to be authorized for out-of-area waste. In an effort to help counties fulfill these requirements, the Annual Authorized Capacity Report form was developed. The information requested in this report form identifies annual disposal amounts, projected waste generation, permit capacity and authorized capacity. The compiled information ultimately helps local and state planners make informed decisions, secure adequate landfill space, plan for future development and determine equitable capacity.

#### **AUTHORITY:**

**401 KAR 49:011** requires all counties to submit the Solid Waste Management Area Annual Report (Form DEP 6061) to the Kentucky Department for Environmental Protection (DEP) by March 1<sup>st</sup> each year. Counties must identify the amount of in-area and out-of-area municipal solid waste disposed in facilities located in their area.

**KRS 224.40-315** specifies that no permit to construct or expand a municipal solid waste disposal facility shall be accepted for processing by the cabinet unless the application contains a determination from the governing body of the Solid Waste Management Area concerning the consistency of the application with the area's Solid Waste Management Plan. Specifically, the proposal must be consistent with the capacity needs of the area.

**KRS 224.43-345** requires Kentucky counties to address the municipal solid waste needs for their area, obtain assurance for landfill capacity for a 10-year period for disposal of in-area municipal solid waste and identify additional capacity authorized for disposal of out-of-area municipal solid waste.

#### **INSTRUCTIONS:**

\* The Annual Authorized Capacity Report applies to all Kentucky counties with the following types of municipal solid waste disposal facilities: *contained and residual landfills, incinerators and waste-to-energy facilities that burn municipal solid waste, and greater than one acre construction/demolition debris landfills.*

\* Please submit a separate report for each facility located in the county.

\* Failure to prepare and submit the Annual Authorized Capacity Report is the equivalent of finding that the County has insufficient disposal capacity and may require an amendment to the County's approved Solid Waste Management Plan.

\* The following reference sources can be used for answering the questions on this form: *Solid Waste Management Plan Updates for 2018-2022, host community agreements, local determination documents, facility permits, annual surveys, waste quantity reports and any other documents that relate to the operations of the facility.*

\* For assistance in completing this form or to obtain copies of reference sources, please contact the 502-564-6716.

\* Submit report(s) by March 1<sup>st</sup> along with the Solid Waste Management Area Annual Report (DEP 6061) to:

**Local Planning and Assistance Section  
Division of Waste Management  
300 Sower Blvd, 2<sup>nd</sup> Floor  
Frankfort, KY 40601  
Phone: (502) 564-6716  
Fax: (502) 564-4245**

### I. CONTACT INFORMATION FOR SOLID WASTE MANAGEMENT AREA (COUNTY/109 DISTRICT):

Reporting Year: \_\_\_\_\_  
 Name of County or 109 District: \_\_\_\_\_  
 Name of Judge/Executive: \_\_\_\_\_  
 Name of 109 Board Chairperson: \_\_\_\_\_  
 Name of Facility: \_\_\_\_\_  
 Permit Number or Agency Interest #: \_\_\_\_\_

Type of Facility (check one): ☐ Contained ☐ Residual ☐ Waste to Energy ☐ Greater than 1 Acre CDD

### II. IN-AREA SOLID WASTE DISPOSED DURING REPORTING YEAR

*Provide the total amount of in-area waste disposed of at the facility for the reporting year. Amounts should be determined by using the compaction rate (tons/cubic yard) identified by the facility. Note: In-area waste amounts for the calendar year can be obtained from DEP or the facility. Compaction rates can be determined from the facility's most recent Annual Survey.*

Type of Material	Tons Disposed	Compaction Rate	Cubic Yards (Yds <sup>3</sup> )
Municipal Solid Waste	_____	_____	_____
Industrial Waste	_____	_____	_____
Special Waste/CDD	_____	_____	_____
<b>TOTAL</b>	_____	_____	_____

### III. OUT-OF-AREA SOLID WASTE DISPOSED DURING REPORTING YEAR

*Provide the total amount of out-of-area waste disposed of in the facility by sources outside the county. Amounts should be determined by using the compaction rate (tons/cubic yards) identified by the facility. Note: Out-of-area waste amounts for the calendar year can be obtained from DEP or the facility. Compaction rates can be determined from the facility's most recent Annual Survey.*

Type of Material	Tons Disposed	Compaction Rate	Cubic Yards (Yds <sup>3</sup> )
Municipal Solid Waste	_____	_____	_____
Industrial Waste	_____	_____	_____
Special Waste/CDD	_____	_____	_____
<b>TOTAL</b>	_____	_____	_____

### IV. IN-AREA SOLID WASTE GENERATION PROJECTION (20 YEAR PROJECTION)

*Note: Waste generation rates can be obtained from the County's Solid Waste Management Plan for 2018-2022.*

Source County	Waste Generation Rate per Person	Waste Projection Total for 2018-2032
_____	_____	_____



### V. TOTAL AUTHORIZED CAPACITY (Tons) for IN-AREA and OUT-OF-AREA WASTE

Using the authorized capacity identified in the County's 2018-2022 Solid Waste Management Plan, distinguish between the amount authorized for in-area waste and the amount authorized for out-of-area waste. Include any additional capacity authorized during the reporting year. Note: Authorized Capacity is determined by the county in which the facility is located. The county is responsible for determining the Total Authorized Capacity (in tonnage) based on the disposal needs of the community and/or disposal caps negotiated with the host facility.

Authorized Capacity (Tons) Identified in 2018-2022 SWMP	Additional Authorized Capacity (Tons) During Reporting Year	Total Authorized Capacity (Tons) as of Dec. 31 <sup>st</sup> of Reporting Year
In-Area (Tons) _____	In-Area (Tons) _____	In-Area (Tons) _____
Out-of-Area (Tons) _____	Out-of-Area (Tons) _____	Out-of-Area (Tons) _____

### VI. REMAINING AUTHORIZED CAPACITY (Yds<sup>3</sup>) for IN-AREA and OUT-OF-AREA WASTE

Based on the total authorized capacity in tonnage as listed in Section V, calculate the cubic yards for total authorized capacity for both in-area and out-of-area waste. Cubic yards should be determined by using the compaction rate identified by the facility. Once the total authorized capacity for cubic yards is identified, subtract the total amount of waste disposed to obtain the Remaining Authorized Capacity (in cubic yards). Note: Total amount disposed as of Dec. 31<sup>st</sup> of the reporting year can be obtained from DEP or the facility.

Total Authorized Capacity (Yds <sup>3</sup> ) as of Dec. 31 <sup>st</sup> of Reporting Year	Total Amount Disposed (Yds <sup>3</sup> ) as of Dec. 31 <sup>st</sup> of Reporting Year	Remaining Authorized Capacity (Yds <sup>3</sup> ) as of Dec. 31 <sup>st</sup> of Reporting Year
In-Area (Yds <sup>3</sup> ) _____	In-Area (Yds <sup>3</sup> ) _____	In-Area (Yds <sup>3</sup> ) _____
Out-of-Area (Yds <sup>3</sup> ) _____	Out-of-Area (Yds <sup>3</sup> ) _____	Out-of-Area (Yds <sup>3</sup> ) _____

### VII. REMAINING PERMIT CAPACITY

Note: Remaining permit capacity (the available airspace in cubic yards) at the end of the reporting year can be obtained from DEP or the facility.

Total Permitted Capacity (Yds <sup>3</sup> )	Total Amount Used to Date (Yds <sup>3</sup> )	Total Permit Capacity Remaining (Yds <sup>3</sup> )
_____	_____	_____

# **VIII. PLANNING and PERMITTING ACTIONS DURING REPORTING YEAR**

*Please check any of the following planning or permitting activities initiated or completed during the reporting year.*

- ☐ Siting and/or construction of a solid waste disposal facility in the county.
- ☐ Vertical or horizontal expansion for an existing solid waste disposal facility in the county.
- ☐ Local Determination by the county for proposed siting and/or expansions.
- ☐ Public notification and/or public hearings held by the county for siting and/or expansions.
- ☐ Amendments made to the 2018-2022 Solid Waste Management Plan for siting and/or expansions.
- ☐ Additional capacity authorized by the county to accommodate expansions.
- ☐ New, modified or renegotiated contracts or host agreements with a solid waste disposal facility.

## **CERTIFICATION**

*"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for such violations."*

\_\_\_\_\_  
Authorized Signatory (Judge/Executive)

\_\_\_\_\_  
Original Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Signatory (109 Board Chairperson)

\_\_\_\_\_  
Original Signature

\_\_\_\_\_  
Date

## Headlines of Interest

**Brief Synopsis:** Lack of control of the waste sources, amounts, and types can ultimately lead to out of area, unapproved, and potentially hazardous waste ending up in a landfill.

**Examples:**

**Estill County's Landfill, Advanced Disposal, accepted out of area radioactive waste that could negatively impact the community.**

*Radiation to be monitored at landfill where waste was illegally dumped.* By Greg Kocher, Lexington Herald Leader, January 3, 2017.

*Shipping radioactive waste a hot issue in drilling sector.* By Anya Litvak, Pittsburgh Post-Gazette, April 4, 2016.

*People in Estill County want radioactive waste removed from landfill.* By Kelsi Thorud, WTVQ Daily News Email, February 12, 2018.

**Brief Synopsis:** Lack of Planning and Zoning, Siting Ordinances, control of waste sources and types of waste can lead to issues that impact the community directly.

**Examples:**

**Boyd County's Landfill, Big Run, trucks in out of area waste from New Jersey and New York that sits and creates odor that affects the community.**

*Ashland's Big Run Landfill shuts down rail operation.* By David E. Malloy, Herald Dispatch, April 20, 2016.

*Boyd County 'mega-landfill' to be downsized.* By The Associated Press, WKYT News, November 25, 2015.

*Stinky dump in Kentucky pledges to stop taking trash trains.* By James Bruggers, The Louisville Courier-Journal, August 18, 2015.

*Trash trains bring stench, misery to Kentucky County.* By James Bruggers, The Louisville Courier-Journal, May 15, 2015.

**Scott County's Landfill, Central Kentucky Landfill, proposes an expansion that will increase traffic and waste coming into Scott County.**

*Scott County residents at hearing oppose landfill expansion.* By Trey Crumbie, Lexington-Herald Leader, January 11, 2017.

**Boone County's Landfill, Bavarian Landfill, has taken sewer sludge that has left an odor affecting the community.**

*Special waste raises stink near Boone County Landfill.* By Carrie Blackmore Smith, Cincinnati Enquirer, November 28, 2014.



STATE

## Radiation to be monitored at landfill where waste was illegally dumped

BY GREG KOCHER

*gkocher1@herald-leader.com*

January 03, 2017 04:48 PM

Updated January 04, 2017 11:46 AM

Radiation monitors will be installed at an Estill County landfill as part of a signed agreed order, the Kentucky Energy and Environment Cabinet said Tuesday.

The cabinet said the agreed order with Advanced Disposal Services Blue Ridge Landfill Inc. has remedial and penalty provisions on radioactive material that was illegally brought to Estill County in 2015.

The agreed order requires Blue Ridge to develop a “corrective action plan” that must address the disposal of “technologically enhanced naturally occurring radioactive material” brought to the landfill near Irvine. The action plan also must contain a timetable for the completion of specific actions and an estimated date for final compliance.

The landfill also must have a plan for detecting and preventing future disposal of unpermitted waste.

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Blue Ridge also agreed to a \$95,000 civil penalty that the Cabinet has agreed to offset by allowing the company to perform supplemental environmental projects.

Specifically, Blue Ridge has agreed to deposit \$60,000 into an escrow account for the Estill County School District to pay toward detection and mitigation of naturally occurring radon, and-or establishing educational programs related to environmental sciences.

As part of the agreed order, the landfill company will install radiation monitors at the Estill County landfill and at its affiliated Morehead landfill, which did not receive any unpermitted waste. Radiation monitoring at the landfill will be incorporated into the company’s plan to prevent future disposal of such waste and will be a requirement of the Blue Ridge Landfill solid-waste permit.

The agreed order requires that the escrow account be established and any monitoring devices be installed within 120 days of the signing of the agreed order.

In addition to the civil penalty, Blue Ridge has agreed to a stipulated \$2,500 penalty if it fails to meet deadlines associated with submitting the corrective action plan. Blue Ridge also has agreed to stipulated penalties of \$25,000 for future acceptance of unpermitted waste.

“We believe that this agreed order — and the corrective action plan that is to follow — will protect the citizens of Estill County and the local environment now and in the future,” Secretary Charles Snively said in a news release. “We appreciate the stakeholders who participated with us in bringing this process to this point.”

State officials say that 92 shipments containing more than 1,900 tons of waste originating in Ohio and West Virginia were illegally dumped in Kentucky. The Estill County landfill is across the road from the high school and the middle school.

State officials have said that the estimated exposure to landfill workers and to students and teachers at the high school and the middle school is low, and that there is no evidence to suggest any measurable impact of the waste.

The agreed order doesn’t resolve any violations of state law or any allegations that might arise from any investigation by the Cabinet for Health and Family Services into the generators, transporters and brokers who arranged for the importation of the waste into Kentucky.

In November, the state Cabinet for Health and Family Services announced that it will seek \$8.5 million from various companies responsible for dumping the waste. Other companies might be added to the list if evidence is found connecting them to the dumping.

A lawsuit that Estill County Fiscal Court has brought against the landfill and others is pending in circuit court. The lawsuit alleges that the county’s host agreement and solid-waste ordinance were knowingly and willingly violated by bringing in out-of-state radioactive waste.

*Greg Kocher: 859-231-3305, @HLpublicsafety*

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# Shipping radioactive waste a hot issue in drilling sector

April 4, 2016 12:00 AM

By Anya Litvak / Pittsburgh Post-Gazette

Sometime between July of last year and January, 866 tons of radioactive oil and gas waste traveled from a wastewater treatment plant in Fairmont, W.Va., to a landfill in Kentucky, zigzagging through a mishmash of state and federal regulations and ending up embroiled in an attorney general's investigation.

The operation wasn't exactly clandestine.

Fairmont Brine Processing, an oil and gas water treatment plant, told West Virginia regulators that it planned to hire Advanced Tenorm Services to truck the waste into Kentucky and dispose of it at Blue Ridge Landfill.

West Virginia regulators knew the waste was "hot" — the concentrated sludge was between four and 14 times the radioactivity dose that would be allowed in a Pennsylvania landfill, according to West Virginia's own measurements. State regulators wanted to make sure it didn't end up in a West Virginia landfill, so they approved the plan.

Then, as a courtesy, they called Kentucky.

"The division of waste management was aware in July that there was intent," said Jon Maybriar, assistant director of the division of waste management at the Kentucky Department of Environmental Protection.

"But we had no idea that they had actually brought it into the state until some time after that," said Tony Hatton, director of the division.

In fact, it was someone in the waste management industry who nudged the department six months after the waste began coming into the state.

Now, the Kentucky state attorney general, Andy Beshear, is looking into how the waste generated by Fairmont Brine and three Ohio companies made its way into two Kentucky landfills with ample warning — and whether that was against the law.

Advanced Tenorm also appears to have taken waste from Cambrian Well Services, Nuverra Environmental Solutions, and GreenHunter Water into Kentucky, according to Kentucky officials.

The investigation, which is focusing on Cory Hoskins, the owner of Kentucky-based Advanced Tenorm, might need to detour into a study of the disjointed patchwork of how radioactive oil and gas waste is regulated among the states that produce, process and dispose of it.

### **No national standard**

The earth is bathed in radioactivity, from the natural materials below the surface to the sun's rays above. Oil and gas companies dredge up radioactive materials when they drill and when they collect wastewater from their wells. Because these materials are unearthed by human activity, they are referred to as "technologically enhanced naturally occurring radioactive materials," or TENORM.

No federal regulations exist for such materials, and oil and gas states have struggled to keep pace with the needs of the industry.

Ohio, for example, doesn't allow anything with a concentration above 5 picocuries per gram to be disposed of at its landfills. But it does allow companies to mix radioactive waste with so-called "cold" waste to dilute the concentration and bring it under the landfill threshold.

Pennsylvania doesn't allow dilution within its borders. If someone dilutes in a different state and brings the resulting waste into Pennsylvania, that's OK.

The Keystone State's regulations for such materials, which some have described as being among the most comprehensive in the nation, are still in flux.

### **Missed connections**

About a year after Fairmont Brine took over the wastewater treatment plant it now runs, its president Brian Kalt began looking around for a landfill to take its radioactive waste.

Waste Management, a waste handling and disposal company, sampled Fairmont's sludge and declined to take it.

West Virginia regulators, at the time, ordered Waste Management's Meadowfill landfill to stop accepting such waste after several truckloads of radioactive material from Range Resources ended up there with much fanfare.

In fact, West Virginia's radiation chief told Fairmont he didn't want the waste disposed anywhere in the state, Mr. Kalt said.

Mr. Kalt knew what usually happened in these situations: Companies had to truck this kind of waste across the country for disposal in specialized landfills handling low-level radioactive waste. It's an expensive route.

"I'd heard rumblings that there were other places you can get into — Kentucky and Michigan. Oil and gas companies told me," Mr. Kalt said. "That's how we found Advanced Tenorm."

Mr. Hoskins, the owner, had published scientific articles about oil and gas radioactive waste, touting a process that would mix the waste with non-radioactive material to dilute and solidify it so that it could be disposed of in a residual waste landfill.

Mr. Kalt typed in the address of the solidification facility in Ashland, Ky., that Mr. Hoskins provided and was satisfied that it looked, in satellite images, as promised: a large equipment yard with containers used to mix and bind waste.

Mr. Kalt said that after West Virginia regulators approved the plan, he never heard another word about it.

"When you're talking to a regulatory body, you're under the assumption that if they say go, [all is clear]," he said.

In fact, some Kentucky officials said they warned against bringing the waste into the state and others said they didn't know anything about it. The waste fell in the gap between two agencies — solid waste management and radioactive materials.

There are no TENORM-specific regulations in Kentucky. The import of low-level radioactive waste into Kentucky is prohibited unless it comes from Illinois, but the compact that governs this arrangement can be ambiguous about what constitutes low-level radioactive waste.

Mr. Maybriar, of Kentucky's waste management division, said he heard from a colleague at the health department that West Virginia regulators had called about some oil and gas waste, and they wanted to know if it would be considered hazardous waste. He said it didn't fit the federal definition and left it at that.

"It didn't really jump on our radar screen at that time," Mr. Hatton, the other Kentucky waste management official, said.

The Kentucky health department official, meanwhile, told West Virginia regulators that it is not OK to bring this waste into Kentucky or dispose of it there. West Virginia received the message, said Toby Wagoner, a spokesperson for the state's Bureau of Public Health. But it never relayed that to Fairmont Brine Processing.

Mr. Wagoner said that wasn't its job.

"Our notification to Kentucky was as a professional courtesy only," he said. "We do not know if the regulatory agency in Kentucky followed up with either company. Our office does not regulate where the material goes outside of West Virginia."

Months after the waste started traveling to Kentucky, Mr. Kalt sent West Virginia manifests showing its path.

The Kentucky department of solid waste similarly didn't pursue the matter, although Mr. Maybriar said it was his impression that the health department official, Curt Pendergrass, told Advanced Tenorm it couldn't import the waste into the state.

But that did not happen, said Anya Weber, a spokesperson for the Kentucky agency where Mr. Pendergrass works.

"However, in an email last summer, [Mr. Pendergrass] notified the West Virginia regulatory authority that it was illegal to import any waste containing radionuclides for disposal in Kentucky," she said.

Kentucky officials said they are now aware of the Kentucky facility, also owned by Mr. Hoskins, where the waste was diluted and solidified. Ms. Weber said the Radiation Health Branch doesn't license such waste processors, and neither does the waste management department, according to Mr. Hatton.

Mr. Hoskins at Advanced Tenorm did not return repeated calls for comment.

If any warning was sent to Mr. Hoskins, it never made it to Fairmont Brine, Mr. Kalt said.

"Absolutely not. A hundred percent absolutely not," he said.

Bob Orr, who operates a wastewater disposal well for Cambrian Well Services in Norwich, Ohio, said the same.

Mr. Orr hired Advanced Tenorm to dispose of two trucks-worth of tank sediment and filter socks last year. The waste was solidified and later disposed of at Green Valley Landfill in Ashland.

The first time Mr. Orr heard that was a problem was when he got a call from the Kentucky attorney general's office last month.

Robert Sloan, senior vice president at GreenHunter, said he had never heard of Mr. Hoskins or Advanced Tenorm until he got a call from the Kentucky attorney general's office last week. He said the Texas company which has extensive operations around the country is investigating how it might have gotten involved in this matter.

Nuverra, based in Arizona, did not return calls for comment.

Public health officials in Kentucky have tested the two landfills that accepted the waste and did not detect elevated radioactivity levels, indicating no current threat to public health. They are looking into whether workers were exposed to unhealthy doses of radiation during the transport and handling of the material.

Responding to this experience, Kentucky's energy and environment Cabinet is launching an oil and gas work group to explore these issues.

"With what happened, the state believes it had the rules in place to prevent it," said John Mura, a spokesperson for the Cabinet. "Someone circumvented those rules and that would be something we're looking at."

*Anya Litvak: [alitvak@post-gazette.com](mailto:alitvak@post-gazette.com) or 412-263-1455.*

# PEOPLE IN ESTILL COUNTY WANT RADIOACTIVE WASTE REMOVED FROM LANDFILL

By **Kelsi Thorud** - February 12, 2018

ESTILL COUNTY, Ky. (WTVQ)- Some people in Estill County are asking the state to rethink a plan that would leave more than a thousand tons of illegally dumped radioactive waste in an Estill County landfill.

Gina Hatton lives just down the road from the Blue Ridge Landfill.

"I'm just, I'm very concerned. It's scary. It's very scary," said Hatton.

Hatton is just one of dozens of Estill County residents asking the state to remove thousands of tons of radioactive waste illegally dumped into the landfill back in 2015.

"What could happen down the road if it were to be able to leach out of the landfill, get into our streams or into the air and so forth," said Tom Bonny, with Concerned Citizens of Estill County.

## Related Article: Former tobacco barns repurposed for anti-smoking message

That's why this group is pleading with the state not to accept an action plan that would keep the waste where it is.

"I mean it's going to affect us if it leaks out. We're going to pay the price for it," said Hatton.

One of Hatton  
many Estill Co



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ximity to  
street.

"My oldest son

NO THANKS

ALLOW

ing high school

so he's got four more. You know and I'm just very uneasy about them being that close to this," said Hatton.

The company that created the action plan also tested the waste and says it believes it would be safer to keep the waste buried rather than dig it up and move it but people here aren't so sure of that.

"Given all the uncertainties about how hot the materiel is, the radio-logical activity of this material. We don't think it's just to burden this community for generations to come," said Mary Comer, the lawyer representing the Concerned Citizens of Estill County.

It's those generations to come that is motivating people like Hatton to fight to get this waste out of their county.

"Oh yeah. Why was this allowed to happen? You know the potential of what it can do, can cause, is that worth money? Is that worth peoples lives?" said Hatton.

It is now up to the state's energy and environment cabinet to decide whether to approve the current plan to leave the waste where it is or ask for a revised plan that could include full removal.

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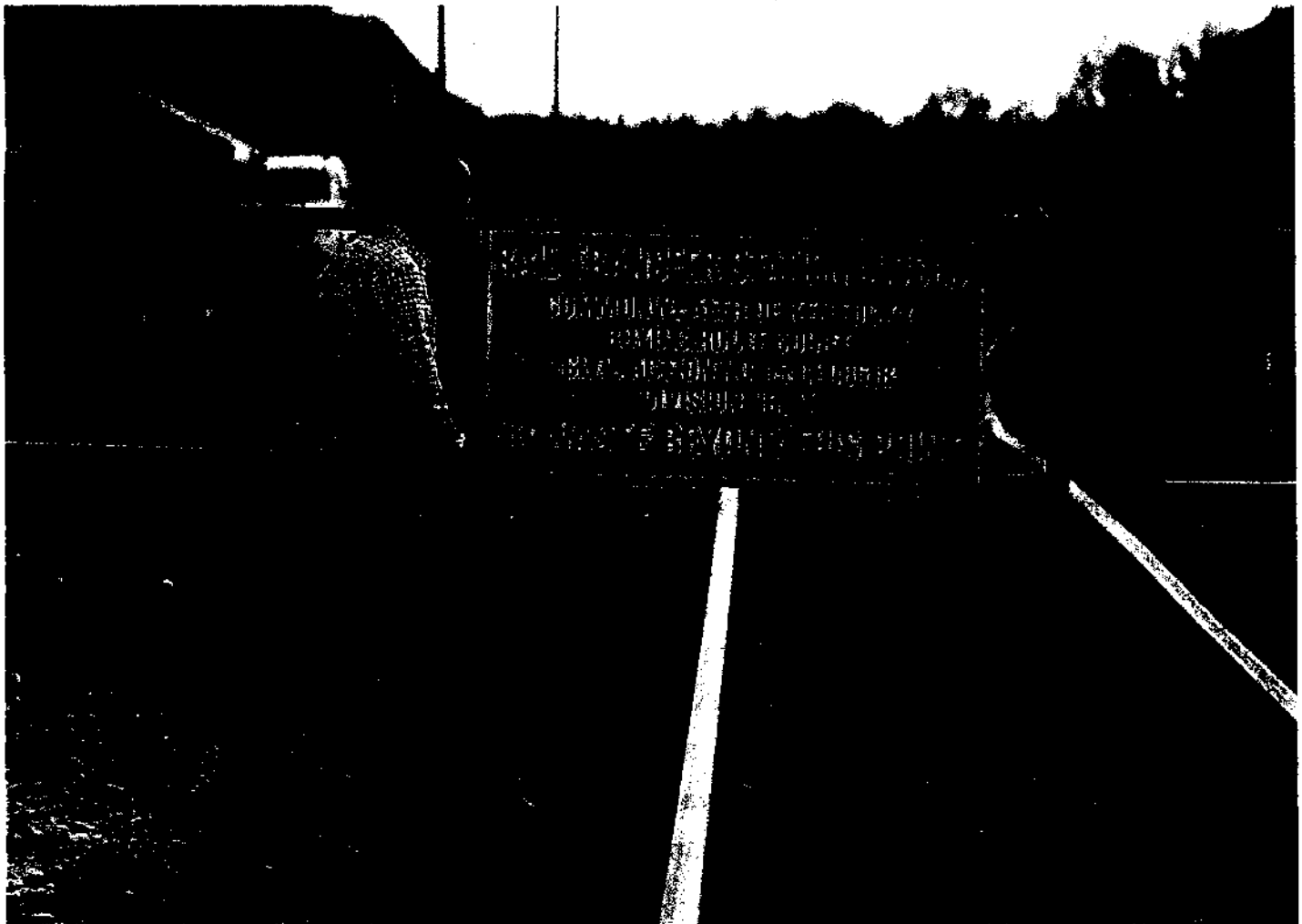


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## Ashland's Big Run Landfill shuts down rail operation

By DAVID E. MALLOY Apr 20, 2016



Sholten Singer/The Herald-Dispatch EnviroSolutions President and Chief Executive Officer Dean Kattler locks a gate across the railway as Big Run Landfill closes down its waste by rail operation on Tuesday, April 19, 2016, in Ashland. The move is two months ahead of the June 30th deadline mandated under the agreement reached with the Boyd County Fiscal Court.

Sholten Singer/The Herald-Dispatch

COALTON, Ky. - The Big Run Landfill took in its last load of East Coast garbage and closed its rail yard on Tuesday, a move that will lead to the layoff of about 50 employees.

As part of an agreed order among county, state and industry officials, Big Run stopped taking in garbage from New Jersey and New York brought by rail into the 1,600-acre landfill between U.S. 60 and Interstate 64 two months ahead of schedule.

"We've been working hard to get this done," said Dean Kattler, chief executive officer for EnviroSolutions, which owns the landfill. "We've sold our New Jersey assets. We didn't want to wait until the last minute."

The last train to bring solid waste to the Kentucky landfill left the rail yard Tuesday and a gate placed across the Sycamore Trail Transfer Station tracks.

"I'm glad to see the trains go," said Brad Maggard, a Cannonsburg area resident. "But I feel sorry for the next area to get them. No one should be subjected to the problems created by waste via rail."

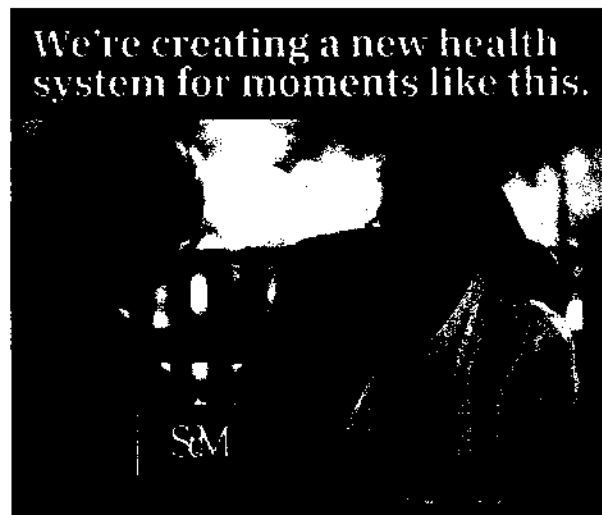
"My biggest hope is that our residents can enjoy their outsides and their barbecues without the odor from the rail cars this summer," said Sean Borst, of the Boyd County Environmental Coalition, a landfill opponent.

"The large amount of waste coming in via rail was a significant problem in our community," Borst said. "There are still many items that need to be completed over the next year under the agreed order of judgment. The next milestone will be the final capping of the old landfill by September 2016."

"Our community suffered under the nuisance of the rail waste shipments for far too long," said Steve Cole, a coalition member. "The ending of the rail waste shipments was not voluntary by the landfill, but required that the citizens of Boyd County seek the cessation via a lawsuit. I applaud the citizens of Boyd County for their determination, resolve and their continuing efforts to restore the quality of life that the landfill has taken away from so many people."

The landfill will continue to serve communities within a 75-mile radius with the 20 to 25 remaining workers. The company is seeking a new, five-year operating permit from the Division of Waste Management in Frankfort. The existing permit expires May 16.

Closing the rail yard that allowed the landfill to receive solid waste via rail was a priority, said Boyd County Judge-Executive Steve Towler.



The company initially wanted to keep the rail operations going through 2016 before agreeing to stop rail operations by July 1.

"The sooner it's closed, the better," Towler said. "The odor problem gets worse when the weather turns warm. We've had some 80-degree days, so we're elated the rail yard is closing.

"Many of the complaints we felt were from the rail cars," Towler said. "The trains were going through residential areas. The odor problems have diminished. We regret the job losses."

With waste now coming to the landfill via trucks, the county will see a big drop in the \$1 million it received in tipping fees. The county gets \$1 for every ton of waste dumped at the landfill while the state gets a \$1.75 per ton fee.

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## Boyd County 'mega-landfill' to be downsized



By The Associated Press | Posted: Wed 8:26 AM, Nov 25, 2015

**ASHLAND, Ky. (AP)** - The Big Run Landfill in eastern Kentucky will downsize after the company, state and citizens groups reached an agreement.

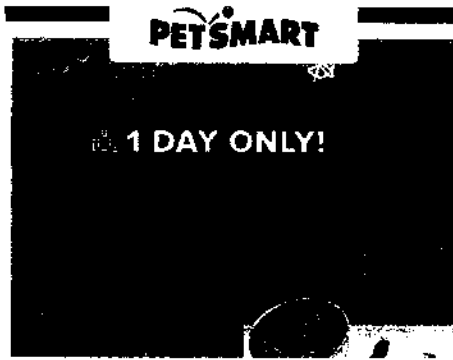
Local media outlets report the agreement was made Tuesday. In June, a citizens' group filed a lawsuit against the company and the Kentucky Energy and Environment Cabinet, arguing the measures that expanded the landfill 10 years ago weren't constitutional.

Under the agreement, Big Run will transition from a mega-landfill to a regional one, just accepting waste from Boyd County and nearby counties. Trains will stop bringing trash to the landfill by next June and certain segments of the dump will be closed by September.

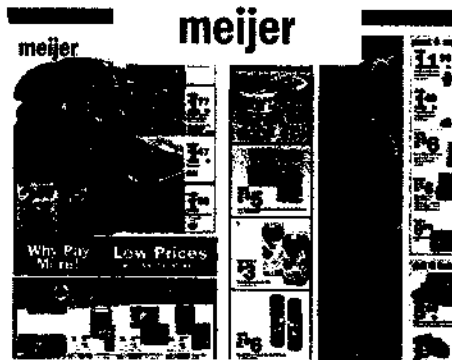
Judge-Executive Steve Towler says he hopes the agreement will address the environmental and odor problems, but keep the landfill's contributions to the local economy.

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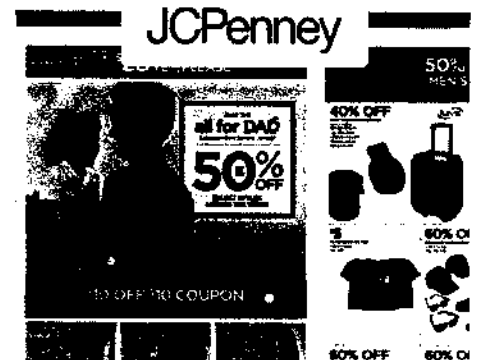
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## Stinky dump in. Ky. pledges to stop taking trash trains

James Bruggers, The (Louisville, Ky.) Courier-Journal Published 8:03 p.m. ET Aug. 18, 2015 | Updated 8:04 p.m. ET Aug. 18, 2015



(Photo: Kevin Goldy/ The Independent)

LOUISVILLE, Ky. — The operators of a massive, troubled and stinky landfill near Ashland, Ky., announced Tuesday that they will phase out all rail deliveries (<http://cjkylt/1ND8S62>) of out-of-state trash by the end of next year.

Rail volume of waste delivered to the Big Run landfill will drop 30% by the end of this year and terminate by the end of 2016, or in 16 months, cutting the dump's total intake by 75%, the landfill announced.

CEO Dean Kattler of parent company EnviroSolutions also said that rail deliveries containing sewage sludge will end within three weeks, although the landfill will continue to accept sludge from local municipalities, including Ashland and Huntington.

"We have consistently said we would look at every area of our operations to ensure we are doing what is in the best interests of this community and this company," said Kattler in a written statement. "These moves are a balanced and responsible response to concerns that have been raised and we are in discussions with officials regarding how to appropriately reflect this shift in operations in the permit renewal process."

N.Y. trashing Delaware with tons of garbage

(<https://www.usatoday.com/story/news/nation/2015/08/03/new-york-trashes-delaware/31083459/>)

The announcement comes as the company and local and state officials face lawsuits from angry citizens, pressure from Boyd County officials, and as landfill operators seek a permit renewal from Kentucky environmental regulators amid ongoing odor fines. It was not enough Tuesday to stop the loud demands that the dump be shut down. But it caught the attention of state and local officials who say the concession needs to be fully weighed.

"Our county voted for closure, and the people have spoken," said Sean Borst, an Ashland resident and the medical director for Regional Endocrine Diabetes Associates there. "Let's close it and cap it and start rebuilding our community."

He said the company has lost the trust of the community.

EnviroSolutions "has made promises in the past and they have not kept those promises to our community," said Borst, who is also a board member of Citizens of Boyd County Environmental Coalition.

The Big Run mega-landfill outside Ashland was intended to be a cash cow for Boyd County, with between 80% and 90% of its waste coming from out of state. But *The Courier-Journal* in May reported that the dump had become a stench-ridden horror for county residents and a challenge for state regulators, who consider it the most troubled landfill in Kentucky.

Boyd County Judge Executive Steve Towler said Tuesday that he sees EnviroSolutions' promise as a major concession and one that further complicates what already has shaped up to be a complicated issue. While Fiscal Court is on record voting to close the dump because of all its problems, he said local officials will need to fully evaluate the company's new position.

"We have to look at this," Towler said, adding that he's not yet backing down from his view that the dump should be closed. "We'd be irresponsible not to. We are talking about a lot of revenue, we are talking about a lot of jobs."

Boyd County has found another landfill in a nearby county to take its trash, but those details are still being worked out, he said.

The Fiscal Court last month called on Kentucky regulators to shut down the dump, even though it provides more than \$1 million in local revenues, much of it from trash coming from states like New Jersey and New York.

The trains themselves were a big part of the problem, Towler said, adding that they were very smelly, moved slowly through town and sometimes blocked road intersections.

"We've about eight years into that train traffic, and it's been constantly getting worse because the (dump) intake was growing." It's now taking thousands of tons out of-state waste daily, he said.

Towler said there are several issues at play, including a new lawsuit filed Friday, that could help determine the future of the landfill.

Horses make garbage pickup green in Vt. village

(<https://www.usatoday.com/story/news/nation/2014/02/09/horse-drawn-garbage-pickup/5318949/>)

Louisville environmental attorney Tom FitzGerald filed that suit on behalf of the citizens group in Boyd County Fiscal Court on Friday, claiming that state and county officials illegally authorized an expansion in landfill capacity and granted the operators a franchise to use the dump for 30 years, without any competitive bidding. Boyd County, the Kentucky Energy and Environment Cabinet and EnviroSolutions subsidiary River Cities Disposal are all named in the suit.

Lawsuits provide only one side in a legal dispute.

The actions announced by the landfill could be a factor in any permit renewal decision, said R. Bruce Scott, commissioner of the Kentucky Department for Environmental Protection.

He said state officials are continuing with that renewal process, including a public hearing Aug. 25. County officials are also revising their solid waste management plan, and that revised plan could also play into a permit decision, Scott said.

But state officials have also said if the landfill remains out of compliance, they won't be able to renew its permit.

5/24/2018

Stinky dump in Ky pledges to stop taking trash trains

The department has assessed the landfill more than \$300,000 in fines.

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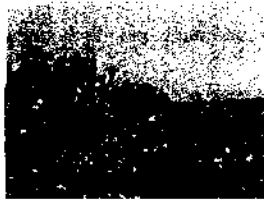


## Trash trains bring stench, misery to Ky. county

James Bruggers, @jbruggers

Published 3:05 p.m. ET May 15, 2015 | Updated 1:11 p.m. ET March 11, 2016

*This story was originally published May 15, 2015*



(Photo: Kevin Goldy, The Independent)

Whether it's a Big Mac wrapper in New Jersey or a flushed toilet in Manhattan, there's a chance that waste will end up in a Kentucky dump, carried there by a "trash train."

The Big Run mega-landfill outside Ashland was intended to be a cash cow for Boyd County, with between 80 and 90 percent of its waste coming from out of state. But it has become a stench-ridden horror for Boyd County residents, a headache for local politicians and a challenge for state regulators, who consider it the most troubled landfill in Kentucky.

"We don't have anything (else) of this magnitude," said Tony Hatton, director of the Kentucky Division of Waste Management. "They can't continue the way it is. The odor issues coming off the landfill are really significant,

and I mean significant."

Big Run has grown to be Kentucky's largest landfill, and one of the busiest in the Eastern United States, accepting more than 3,500 tons of waste a day, about the equivalent of more than 300 garbage trucks, according to Kentucky regulators. It had a massive "trashslide" in 2013 and has racked up nearly 1,000 odor complaints and about 30 violations in the last two years.

Now, key deadlines are approaching that could determine the future of the decade-old landfill, with widespread agreement that the whole situation quite literally stinks.

"We're basically the trash can for every other county on the East Coast right now," said Sean Borts, an Ashland resident and the medical director for Regional Endocrine Diabetes Associates there.

The smells have been unbearable, he said, making student athletes at nearby Boyd County High School sick, while turning other students into citizen scientists armed with odor detection devices. Borts has noticed the stench "coming into my house weekly, and I live seven and a half miles away."

In addition to dump odors, the rail cars also reek, said Boyd County Judge Executive Steve Towler.

"If they are parked for 10 minutes anywhere, people can smell it," he said. "The dump has 'aggravated a lot of people.'"

It doesn't help, he said, that so much of the waste comes from communities so far away.

The resentments are similar to those expressed in Kentucky 25 years ago that led to reforms of state law giving counties more control over waste flowing into their communities — tools that Boyd County officials are not fully using.

The dump is operated by River Cities Disposal LLC, a subsidiary of Virginia-based EnviroSolutions Inc. (<http://www.esiwaste.com/>), a solid waste collection, disposal and recycling company that serves the Northeast and Mid-Atlantic regions.

They said they have a plan for improvements (<http://www.bigrunlandfill.com/plan-of-action/>).

"Reducing odor at Big Run is our highest priority and we have been transparent about our plans, our progress and our expectations," said Scott Cunningham, regional vice president of EnviroSolutions.

## Big trashslide

Citing violations since 2009, the Kentucky Energy and Environment Cabinet in January 2014 entered [into an agreement \(https://www.scribd.com/doc/265221877/Agreed-Order-Jan-2104\)](https://www.scribd.com/doc/265221877/Agreed-Order-Jan-2104) with River Cities to clean up its act by May 23 of this year. It has slapped the company with \$275,000 in penalties.

The slide that occurred in September 2013 involved more than 800,000 tons of waste, sending it some 400 feet off the landfill's plastic liner. Officials partly blamed the disposal of wet sludge.

All that movement damaged the landfill's methane gas collection system, causing odor complaints to surge, Hatton said.

[State begins crackdown on radioactive waste](http://www.courier-journal.com/story/tech/science/environment/2016/03/08/state-orders-end-hauling-radioactive-waste/81496490/)

[\(http://www.courier-journal.com/story/tech/science/environment/2016/03/08/state-orders-end-hauling-radioactive-waste/81496490/\)](http://www.courier-journal.com/story/tech/science/environment/2016/03/08/state-orders-end-hauling-radioactive-waste/81496490/)

But even as the May 23 compliance deadline draws very near, residents are still complaining about odors, and state officials said they were not sure whether the landfill operators will meet their obligations.

The company's permit to operate the Big Run expires at the end of 2015, and Hatton promised close scrutiny of its operations and the quantity and mixture of its wastes, which has included sewage sludge from New York City.

The daily dumping of more than 3,500 tons is a "huge amount" for a landfill located in hilly countryside, where odors settle into low-lying areas by cooler air, he said.

For their part, the company official said landfill space was at a premium in on the East Coast, and he pledged to be in compliance after next week.

"We are investing \$10 million to implement technology, systems and infrastructure to be in compliance ... by May 23rd and to address the odor issue for the long term," Cunningham said. "We expect that odor will be substantially reduced following the completion of significant enhancements to the gas system and the placement of final cap and enhanced long-term cover on at least 40 acres of landfill."

They are spraying more deodorant, changed how the trash is carried on the trains, and the company has cut back on sludge disposal, he said.

He said Big Run also offers the area economic benefits, including employing 72 local people with a 2014 payroll of \$3.1 million.

## Revenue producer

The landfill wasn't always going to be so large, Hatton said.

An original plan in the late 1990s called for a dump at the site that would hold no more than 7,000 tons over its lifetime, he said.

Under state law, Boyd County is required to submit a waste management plan to the waste management division. And in 2005, county officials amended that plan to allow for as much as 43 million tons, Hatton said.

[Radioactive waste a test for Bevin administration](http://www.courier-journal.com/story/tech/science/environment/2016/03/04/radioactive-waste-test-bevin-administration/80999630/)

[\(http://www.courier-journal.com/story/tech/science/environment/2016/03/04/radioactive-waste-test-bevin-administration/80999630/\)](http://www.courier-journal.com/story/tech/science/environment/2016/03/04/radioactive-waste-test-bevin-administration/80999630/)

A decade ago, county officials saw the landfill as a potential big source of revenue, said Towler, who has only been in office since January. He said it generates about \$1 million of Boyd County's \$20 million annual budget.

But he said the landfill never turned into the financial windfall some expected, and the scale of the operation has caught residents by surprise.

"I don't think a lot of people knew or ever really thought about 'trained-in garbage'," said the former United Way administrator and schools superintendent.

The landfill, near the U.S. 60 exit along Interstate-64, also generates about \$2 million in fees that the Kentucky Energy and Environment Cabinet spends across Kentucky to stop open dumping, support recycling, household hazardous waste collection and close abandoned landfills, Hatton said.

He said that revenue does not factor into its enforcement decisions.

Residents have stepped up their opposition as the landfill's compliance deadline approaches, and as the company's permit comes up for renewal.

"We would like to see that permit rescinded," said Borts, the spokesman for the Citizens of Boyd County Environmental Coalition (<http://www.citizensofboydcountyenvironmentalcoalition.com/>), which has been fighting the landfill and pressing for more enforcement.

"In the last five years, we've been bombarded by trains," he said, estimating as many as 300 rail cars a day. People are concerned, he said, about the health consequences of breathing rotten-egg smelling hydrogen sulfide gas, and any other chemicals from the dump that may be in the air.

There's a nursing home and a residential homes nearby, and the high school is less than a mile away, he said. "People can't sit outside on their porches, and they have to light scented candles in their homes," he added.

One critic, Boyd County hairdresser Kenny Messer, even created a parody song, "Trash Train Blues" (<https://www.youtube.com/watch?v=DCY2MBFQjZY>), sung to the tune of Johnny Cash's "Folsom Prison Blues," that's been circulating on social media.

## Legal action

A local lawyer in April filed a class-action lawsuit targeting the landfill operator and some other related companies. And on May 5, the Ohio Valley Environmental Coalition began legal action against River Cities and EnviroSolutions, with a notice of intent to sue under the federal Clean Air Act.

The notice claims the dump has inadequate controls to handle the odors, while doubling of the volume of waste, up from 163,000 tons during the fourth quarter of 2012, to 341,000 during the fourth quarter of last year.

Towler said people are especially irked that the trash is coming from hundreds of miles away, but he said does not believe there's much Boyd County can do about that.

"We've been told we can't block interstate commerce," he said. "We are at the mercy of the state."

Radioactive waste gives Kentucky 'black eye'

(<http://www.courier-journal.com/story/tech/science/environment/2016/03/10/radioactive-waste-gives-kentucky-black-eye/81576744/>)

But counties do have tools to control the waste flowing into landfills in their communities, stemming from solid waste reforms by state lawmakers in the early 1990s, said environmental attorney Tom FitzGerald, director of the Kentucky Resources Council.

Back then, he said, "some communities were deeply resentful of being dumping grounds" for other communities that were not taking care of their own solid waste.

So through solid waste management plans, counties can limit the volume of waste coming to landfills in their communities, FitzGerald said.

FitzGerald said counties also can negotiate what are called "host agreements" with landfill operators. Those, they said, can include geographical limits on the waste, limits on the types of waste, as well as payments to the county.

Hatton agreed with FitzGerald and said he's informed local officials of their options.

Boyd County, however, has no such host agreement, conceded Towler.

That's a missed opportunity, Fitzgerald said.

"When you have tools available and you decide not to avail yourself of them, than that becomes a political question," FitzGerald said.

Towler said he's not sure what Boyd County Fiscal Court will do next.

"It's a complex issue," he said. "I don't like our citizens having odors that are offensive, far beyond normal."

But some residents already feel let down.

"Our county and state laws guarantee us a right to live without nuisances such as this and to protect the health and welfare of the people," said Candy Messer, Kenny Messer's wife. "They both have failed."

Reach reporter James Bruggers at (502) 582-4645 or on Twitter @jbruggers.

## BIG RUN LANDFILL

Amount of waste that's dumped daily in landfill: 3,500 tons

Approximate number of garbage trucks it would take to haul 3,500 tons of waste: 300

Projected total waste capacity in Boyd County's original plan submitted to state: 7,000 tons

Projected total waste capacity in Boyd County amended plan for the landfill: 43 million tons

Number of local jobs affiliated with Big Run: 72

2014 payroll for Big Run workers: \$3.1 million

Annual amount Big Run pays Boyd County, which has total budget of \$20 million budget: \$1 million

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SCOTT COUNTY

## Scott County residents at hearing oppose landfill expansion

BY TREY CRUMBIE  
*tcrumbie@herald-leader.com*

January 11, 2017 11:03 PM

Updated January 12, 2017 11:51 PM

GEORGETOWN — About 50 people spoke in front of a passionate crowd of 300 at a public hearing Wednesday night about expansion of the Central Kentucky Landfill. And their unified message was: Don't do it.

An application, which has been submitted by Waste Services of the Bluegrass, asks the state Division of Waste Management for permission to increase the waste disposal area in the landfill from 46.8 acres to about 75.5 acres.

Waste Services of the Bluegrass also wants to increase the boundary surrounding the landfill from 102.8 acres to 602 acres.

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Chief Operating Officer Greg Elkins said the waste disposal area will be a “horizontal expansion” and the landfill boundary will only be used for borrow and buffer area.

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At the hearing, several Scott County residents said they did not want the expansion to occur, citing concerns about health, safety, proper zoning of the property and the possible effects on wildlife.

One of those safety concerns involves increased traffic along U.S. 25, the route the garbage trucks take to the dump, which lies on Double Culvert Road. Trucks driving down the two-lane road with narrow shoulders has been a concern for Scott County residents. Several residents spoke about being run off the road while in their vehicles or nearly hitting a garbage truck.

In September, a woman died in an accident involving two garbage trucks. One of the sons of the woman spoke at the meeting, his voice quavering during his testimony as he recalled when he found out his mother had died.

"I don't care about anybody's property," James Smith said. "A tornado can come here tomorrow and take everything out. But if two people die in that tornado, it's two people too many."

Georgetown Mayor Tom Prather addressed that concern saying that later in January a new route will be implemented for Georgetown garbage trucks that will use Interstate-75 as a way to access the dump as opposed to using U.S. 25, hoping that the new route will "encourage or shame" others that use the landfill to follow Georgetown's route.

Elkins said the members of Waste Services of the Bluegrass have thought about using Interstate-75 and are "researching options" on it.

The Scott County landfill does not contain only Scott County's trash. In 2015, Fayette County contracted with Waste Services of the Bluegrass to send between 183 and 223 truckloads of trash each week to the Central Kentucky Landfill. Many residents said they were unhappy with Lexington dumping trash in Scott County.

Many residents at the hearing wore stickers that read "Don't Dump on Us."

Jeffrey Levitan, a Georgetown resident of two-and-a-half years, opposed the expansion of the landfill.

"I'm very disheartened to know that we've become the state of Kentucky's dumping ground," he said.

Jessica Power, another resident, expressed concern that Georgetown's current waste management facilities can not handle Georgetown's projected growth, let alone Lexington's trash.

"We don't have decent waste management facilities in Georgetown, Kentucky," she said. "If you have been to our recycling facility, it is a podunk, rinky-dink, about-to-fall-in-on-itself, itty bitty, teeny tiny recycling facility."

Prather said he's concerned about landfill expansion, too.

Prather, who was one of the more calm speakers, said he doesn't want the garbage mound becoming significantly taller, possibly reaching up to 200 feet tall.

"That would make the landfill structure the tallest structure in Scott County," he said. "And I would prefer the tallest structure in our community not be a mountain of garbage."

Residents have until Jan. 19 to submit written comments to the state about the landfill expansion. Afterward, the state government will decide to grant or deny the permit.

*Trey Crumbie: 859-231-3261, @CrumbieHLeader*

## WHERE TO SEND COMMENTS

Comments must be sent to:

Danny Anderson, P.E., Division of Waste Management, Solid Waste Branch, 300 Sower Blvd., Second Floor, Frankfort, KY 40601

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## 'Special' waste raises stink near Boone County landfill

Carrie Blackmore Smith, csmith@enquirer.com

Published 12:05 a.m. ET Nov. 20, 2014 | Updated 9:38 a.m. ET Nov. 28, 2014

*Sewage sludge from wastewater treatment plants in region draws neighbors' complaints.*



(Photo: The Enquirer/Patrick Reddy)

John McSherry walked into a crowded room at the Walton Branch of the Boone County Library and felt an instant flood of relief: He was not alone.

For months the retired Navy pilot and his wife had attempting to pinpoint the source of a raw sewage smell at their farm here, ruling out nearby septic tank systems, when word reached them that people across the community were reporting a similar stink for 6 months.

"We didn't know it was coming from the (landfill)," McSherry said a couple weeks after the meeting, which had been organized by citizens who say they're frustrated with odors coming from Bavarian Waste Services — a landfill that can be seen from Interstate 71, just after the highway splits from Interstate 75 and heads southwest toward Louisville.

For decades, Bavarian had been a good neighbor, residents around it say. Then smelly gasses began creeping into homes and onto church, school and shopping-center properties with greater intensity and frequency over the last 18 months.

"It's a highly populated area, with a lot of young families," said Boone County Commissioner Charlie Kenner. "It's scary."

The increased complaints came as Bavarian began accepting more waste in recent years and a higher percentage of what is called "special waste." Landfill officials say special waste, which has residents especially concerned, is mostly sewage sludge from wastewater treatment plants. Such waste accounted for a third of all waste taken into the landfill in the first half of 2014, an Enquirer analysis of state data shows.

## Counties where the waste comes from

Since 2013, special waste deliveries from Butler County, Ohio have sharply risen at Bavarian, an Enquirer analysis shows. In the first half of 2014, Butler County was the single biggest source of all waste going into the landfill, and the source of the majority of special waste taken there.

Counties	Pct. all waste 2010	Pct. special waste 2010	Pct. all waste 2014	Pct. special waste 2014
Boone County, Ky.	25.2%	0.2%	19.6%	9.3%
Butler County, Ohio	0.3%*	NA*	21.7%	58.0%
Campbell County, Ky.	5.8%	0.0%	3.8%	1.1%
Dearborn County, Ind.	NA*	NA*	15.8%	0.0%
Hamilton County, Ohio	35.3%	6.2%	15.0%	3.4%
Kenton County, Ky.	32.2%	93.6%	19.4%	25.6%
Warren County, Ohio	NA*	NA*	2.9%	2.6%
All others *	1.2%	0%	1.8%	0%

\*Included Bracken, Butler (Ohio and Kentucky), Carroll, Clermont, Dearborn, Fayette, Gallatin, Grant, Harrison (Ky.), Mason, Montgomery (Ohio), Owen and Pendleton counties in 2010; included Bracken, Carroll, Clermont, Franklin (Ind.), Gallatin, Grant, Montgomery (Ohio), Owen, Pendleton, Scioto and Switzerland counties in 2014

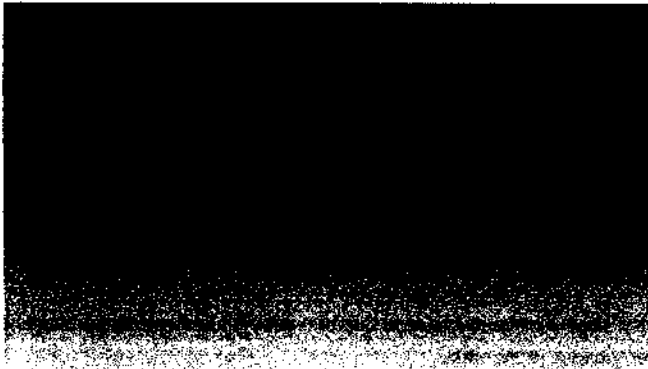
Sources: Kentucky Environmental Protection Cabinet, Division of Waste Management; and Enquirer analysis

The Enquirer

(Photo: The Enquirer)

Special waste is material Bavarian is permitted to accept, although landfill officials believe it's mostly to blame for the heightened odors. Bavarian will temporarily stop accepting sewage sludge from Butler County, Ohio – sending that county on a scurry to find somewhere else to dump – while Bavarian officials implement long-term changes to try to stop the problem, said general manager Dominic Brueggemann.

The sudden outcry has prompted the state of Kentucky to take a closer look. But residents want more local oversight, asking Boone County commissioners to craft an odor ordinance that adds financial penalties.



2010 2011 2012 2013 2014\*  
\*estimated

### Neighbors told if they don't like the smell, move

Duane Reh and his wife love their property, full of old growth forest. In the winter they like to cross-country ski through it, and in the summer they hike around it.

The Reh family has enjoyed every corner of their land until about 18 months ago, when they began noticing odors on the property, nearly 2 miles from the landfill. It got so bad in recent months that it would irritate the eyes and throat, bothersome for a father of children with asthma.

"If the wind is blowing in our direction, we smell it; if it's calm, we smell it," Reh said.

Others in the area were experiencing it, too, and Reh and others approached Bavarian and regional air-quality officials in hopes they would do something to stop the odors. When the stench didn't cease this summer or fall, neighbors' confidence waned. Reh asked for public records to understand what Bavarian was placing in the landfill and began contacting county and state officials.



Duane Reh and his son, Mitchell, 9, in their Boone County home, which is less than 2 miles from the Bavarian Waste landfill. (Photo: The Enquirer/Patrick Reddy)

"Special" waste releases stink near Boone County landfill

Some longtime residents – such as George Hoffman, whose family has had two farms in the area for about 100 years – were discouraged by the response they got from the state's regional air quality office.

"(Director) Clay Redmond says we live next to a dump and you've got to get used to it ... (and) advised people that lived there, if it was him, he'd move," Hoffman said. "We didn't appreciate that."

Calls to the regional air-quality office in Florence were not returned.

Buy Photo

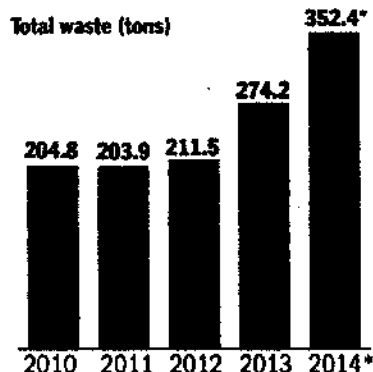
### in more waste ...

Based on amounts received in the first six months of 2014, the landfill is on pace to take in 28.5 percent more waste than in 2013 and 72.1 percent more than in 2010, an Enquirer analysis shows.

### more "special waste"

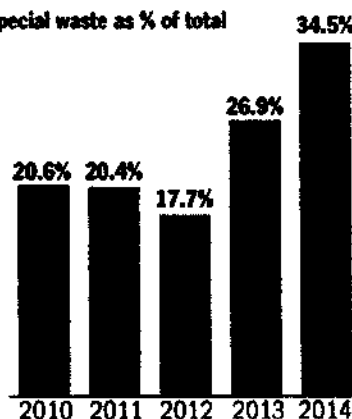
Such waste, including sludge from sewage treatment plants, made up more than a third of the waste the landfill has taken in the first six months of 2014. Based on those six months, special waste shipments in 2014 are on pace to be 64.6 percent higher than in 2013 and 187 percent higher than in 2010.

Total waste (tons)



\* Estimate based on six months total

Special waste as % of total



(Photo: The Enquirer)

### Landfill operators: This is our home, too

McCoys Fork Road has been home to a landfill for about 80 years. For the last four decades it has been owned and operated by members of the Brueggemann family, a large, well-connected family with political ties. U.S. Sen. Rand Paul described the Brueggemanns and other powerful families as his campaign's "secret weapon" in Northern Kentucky in his 2011 book, "The Tea Party Goes to Washington."

Many members of the family have worked at the landfill, including Rick Brueggemann, a newly elected circuit court judge and former Boone County Republican Party chairman.

The footprint of the landfill has steadily grown, currently encompassing 461 acres. It's expected to reach capacity in 2052.

Bavarian was the first landfill in Kentucky to begin collecting gas for renewable energy in 2003, Dominic Brueggemann said. The operation produces power for about 2,000 homes every day in the area.

Jim Brueggemann, president of the company, lives right next to the landfill, his son Dominic Brueggemann said. "This is our home and community, and I like to think we have everybody's best interest in mind," Dominic Brueggemann said.

The landfill has received five notices of violation since 2000 from the Kentucky Division of Air Quality, Dominic Brueggemann said, based on state regulations on landfill odors. Bavarian has always resolved violations without fines or penalties, Brueggemann said.

One of the violations came in late October, when the landfill received 12 loads of sewage sludge from Sanitation District No. 1 and two from Butler County Water and Sewer, far more than usual, Dominic Brueggemann said. Some of the trucks sat on the property longer than Brueggemann had hoped, and the longer they sit, the better chance the odors can float away from the property.

"Plus we had two different working faces we were working on," Brueggemann said, meaning more of the material was exposed to produce odors.

Additionally, SD1 had not treated half of the sludge it delivered because one of its peroxide machines was down, according to the filed response to the violation notice from Bavarian.

Brueggemann said the practices that can be avoided in the future will be. He also said the landfill plans to install more gas collectors and use a thicker coat of daily cover material that is laid down over the waste everyday.

Bavarian has stopped accepting sewage sludge from Butler County "for now," he said. "We think we are getting the issue under control."

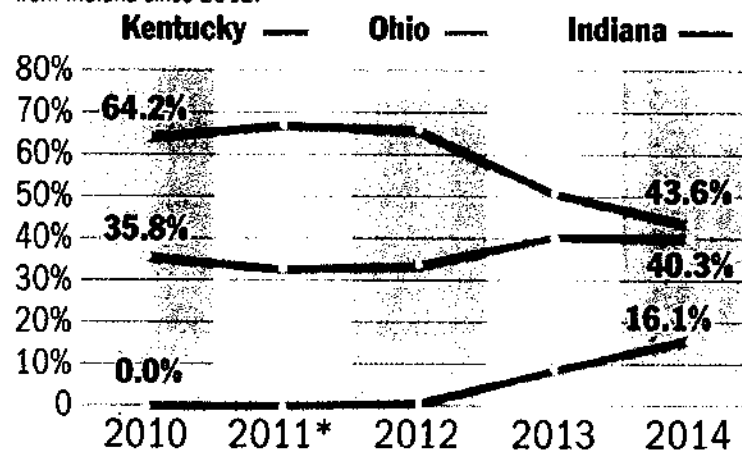
Butler County Water & Sewer Director Robert Leventry said the county creates about 20 dry tons of organic solids each day, and most of it is normally handled through a contract with Hamilton County's Metropolitan Sewer District, which burns it in an incinerator at MSD's Little Miami Treatment Plant. The incinerator has been down a couple weeks, though, Leventry said, so more of the material was being taken to Bavarian.

For now, Butler County's waste is being accepted at a landfill in Preble County, Butler's neighboring county to the north.

Buy Photo

## States where the waste comes from

Less than half the waste that went to Bavarian in the first half of 2014 originated in Kentucky, state data shows. Shipments have sharply increased from Indiana since 2012.



\*Less than 1 percent of waste this year came from Pennsylvania

(Photo: The Enquirer)

### Adding monitoring equipment, talk of an odor ordinance

Bavarian is allowed by law to collect special waste from in or out of state, according to Sean Alteri, director of the Kentucky Division for Air Quality. But the situation unfolding in Walton has launched a review by Alteri's office, along with the state's division of waste management and water quality.

Unlike hazardous material regulations, which are federal, solid waste laws are not universal, said Tom FitzGerald, director of the Kentucky Resource Council, an environmental advocacy group that offers free legal and technical assistance. Yet Kentucky's solid waste regulations are "fairly rigorous," FitzGerald said, after they were revised in the 1990s. "Kentucky was becoming the dumping ground of the mid-Atlantic states" because the regulations were so loose that it was cheaper to transport waste to the Bluegrass State from New York and New Jersey, he said.

The revision closed many landfills, FitzGerald said, and new regulations increased operational costs. But it hasn't stopped neighboring states from transporting waste to Kentucky.

In 1994, a little more than 5 percent of the waste in Kentucky landfills came from out-of-state. Last year the percentage had risen to 35 percent, according to the Kentucky Division of Waste Management's 2014 annual report.

Because one of the odors reported around Bavarian has the smell of rotten eggs – a characteristic of hydrogen sulfide, which can be dangerous even at low concentrations – Alteri said the state plans to buy a portable device to measure the gas.

Bavarian monitors surface gases at the landfill and at various points along its property line, but neighbors said they are happy that one day the air quality at their properties will be able to be tested if an odor arises.

As for an odor ordinance, Kenner said the county is still in an "exploratory phase" but that he and the community group mean business.

"When they smell (the landfill) at Walton-Verona High School and at Walton City Park, it's a serious problem," Kenner said. "There will not be any brushing this under the rug.... The bottom line is air quality."

5/24/2014

'Special' waste raises stink near Boone County landfill

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