

CHAPTER 15**(HJR 11)**

A JOINT RESOLUTION regarding the criteria for selection and approval of Clean Water Act 404 mitigation plans for out-of-kind water quality improvements.

WHEREAS, the FY 2011 annual report of the two in lieu fee programs authorized in Kentucky—Kentucky Department of Fish and Wildlife and Northern Kentucky Stream and Wetland Restoration Fund—reported a fund balance of \$36,957,734 and \$13,178,046 respectively to spend on projects to mitigate damage caused to streams, wetlands, and aquatic resources due to adverse impacts from activities undertaken pursuant to Section 404 or other Department of Army permits authorized by the federal Clean Water Act; and

WHEREAS, stream and wetland mitigation may be commenced by making improvements to the physical characteristics of the stream and riparian zone, or by restoring the biological or chemical characteristics of the water; and

Whereas, the Interagency Review Team (IRT), established pursuant to an agreement with the United States Army Corps of Engineers (USACE) to make award of (ILF) funds for mitigation projects, does not have the authority and cannot approve sewer line and straight pipe projects and will only make awards where water quality has not been degraded; and

WHEREAS, the USACE may, if applicable, allow up to 25 percent of the mitigation funds for sewer line and straight pipes in the county where the permittee had operated as part of the overall mitigation plan, but only if that project is submitted as permittee-responsible project and only when the project is approved by USACE; and

WHEREAS, water pollution problems which are largely attributable to sewerage issues such as straight pipes, septic systems and old or inadequate sewer infrastructure are serious issues in Eastern Kentucky; and

WHEREAS, because the criteria for candidate mitigation sites is rigorous and the extremely low conductivity standard in Appalachia reduces the number of eligible streams in the same county where the permittee operated, encouraging more permittee responsible mitigation with set aside for sewer and straight pipe improvements ensures the approval of more projects that afford meaningful value to the Commonwealth, other than stream restoration;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. The Kentucky General Assembly strongly encourages all Section 404 permittees that utilize permittee responsible mitigation to include as part of the overall mitigation plan, a 25 percent set aside for sewer and straight pipe improvements in the county where the permittee operates. The Energy and Environment Cabinet shall compile a list of sewer and straightpipe projects that have been approved by USACE for mitigation, the waters that will be affected by those improvements and the progress in achieving the goals of this section. The cabinet shall make a written report of those findings to the Legislative Research Commission and the committee of jurisdiction not later than June 15, 2013 and every year thereafter.

➔Section 2. The Kentucky General Assembly directs the Kentucky Energy and Environment Cabinet to work with the University of Kentucky and University of Louisville to develop guidelines to determine the percentage value of a proposed out-of-kind mitigation project to the overall mitigation requirements imposed on the permittee.

➔Section 3. The Kentucky General Assembly respectfully requests that the Kentucky Congressional delegation amend the Clean Water Act to prohibit the United States Environmental Protection Agency and the United States Army Corps of Engineers from imposing a discriminatory standard for conductivity that results in the Appalachian regions being excluded from benefits entitled to them under law.

➔Section 4. A copy of this Resolution shall be sent to James Townsend, Operations Branch, Regulatory Division, United States Army Corps of Engineers, Louisville, KY 40201; Secretary Lenn Peters, Energy and Environment Cabinet, 500 Mero Street, 5th Floor, Frankfort, Kentucky 40601; and to each member of the Kentucky congressional delegation.

Signed by Governor March 28, 2012.