

CHAPTER 117**(SB 249)**

AN ACT relating to the Energy and Environment Cabinet.

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

→Section 1. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

- (1) The Governor.
- (2) Lieutenant Governor.
- (3) Department of State.
 - (a) Secretary of State.
 - (b) Board of Elections.
 - (c) Registry of Election Finance.
- (4) Department of Law.
 - (a) Attorney General.
- (5) Department of the Treasury.
 - (a) Treasurer.
- (6) Department of Agriculture.
 - (a) Commissioner of Agriculture.
 - (b) Kentucky Council on Agriculture.
- (7) Auditor of Public Accounts.

II. Program cabinets headed by appointed officers:

- (1) Justice and Public Safety Cabinet:
 - (a) Department of Kentucky State Police.
 - (b) Department of Criminal Justice Training.
 - (c) Department of Corrections.
 - (d) Department of Juvenile Justice.
 - (e) Office of the Secretary.
 - (f) Office of Drug Control Policy.
 - (g) Office of Legal Services.
 - (h) Office of the Kentucky State Medical Examiner.
 - (i) Parole Board.

- (j) Kentucky State Corrections Commission.
- (k) Office of Legislative and Intergovernmental Services.
- (l) Office of Management and Administrative Services.
- (m) Department for Public Advocacy.
- (2) Education and Workforce Development Cabinet:
 - (a) Office of the Secretary.
 - 1. Governor's Scholars Program.
 - 2. Governor's School for Entrepreneurs Program.
 - (b) Office of Legal and Legislative Services.
 - 1. Client Assistance Program.
 - (c) Office of Communication.
 - (d) Office of Budget and Administration.
 - 1. Division of Human Resources.
 - 2. Division of Administrative Services.
 - (e) Office of Technology Services.
 - (f) Office of Educational Programs.
 - (g) Office for Education and Workforce Statistics.
 - (h) Board of the Kentucky Center for Education and Workforce Statistics.
 - (i) Board of Directors for the Center for School Safety.
 - (j) Department of Education.
 - 1. Kentucky Board of Education.
 - 2. Kentucky Technical Education Personnel Board.
 - (k) Department for Libraries and Archives.
 - (l) Department of Workforce Investment.
 - 1. Office for the Blind.
 - 2. Office of Vocational Rehabilitation.
 - 3. Office of Employment and Training.
 - a. Division of Grant Management and Support.
 - b. Division of Workforce and Employment Services.
 - c. Division of Unemployment Insurance.
 - (m) Foundation for Workforce Development.
 - (n) Kentucky Office for the Blind State Rehabilitation Council.
 - (o) Kentucky Workforce Investment Board.
 - (p) Statewide Council for Vocational Rehabilitation.
 - (q) Unemployment Insurance Commission.
 - (r) Education Professional Standards Board.
 - 1. Division of Educator Preparation.
 - 2. Division of Certification.
 - 3. Division of Professional Learning and Assessment.

4. Division of Legal Services.
- (s) Kentucky Commission on the Deaf and Hard of Hearing.
- (t) Kentucky Educational Television.
- (u) Kentucky Environmental Education Council.
- (3) Energy and Environment Cabinet:
 - (a) Office of the Secretary.
 1. Office of Legislative and Intergovernmental Affairs.
 2. Office of General Counsel.
 3. Office of Administrative Hearings.
 4. Mine Safety Review Commission.
 5. Kentucky State Nature Preserves Commission.
 6. ~~Kentucky Environmental Quality Commission.~~
 7. Kentucky Public Service Commission.
 - (b) Department for Environmental Protection.
 1. Office of the Commissioner.
 2. Division for Air Quality.
 3. Division of Water.
 4. Division of Environmental Program Support.
 5. Division of Waste Management.
 6. Division of Enforcement.
 7. Division of Compliance Assistance.
 - (c) Department for Natural Resources.
 1. Office of the Commissioner.
 2. Division of Technical and Administrative Support.
 3. Division of Mine Permits.
 4. Division of Mine Reclamation and Enforcement.
 5. Division of Abandoned Mine Lands.
 6. Division of Oil and Gas.
 7. Division of Mine Safety.
 8. Division of Forestry.
 9. Division of Conservation.
 10. Office of the Reclamation Guaranty Fund.
 - ~~{11. Kentucky Mining Board.}~~
 - (d) Department for Energy Development and Independence.
 1. Division of Efficiency and Conservation.
 2. Division of Renewable Energy.
 3. Division of Biofuels.
 4. Division of Energy Generation Transmission and Distribution.

5. Division of Carbon Management.
 6. Division of Fossil Energy Development.
- (4) Public Protection Cabinet.
- (a) Office of the Secretary.
 1. Office of Communications and Public Outreach.
 2. Office of Legal Services.
 - a. Insurance Legal Division.
 - b. Charitable Gaming Legal Division.
 - c. Alcoholic Beverage Control Legal Division.
 - d. Housing, Buildings and Construction Legal Division.
 - e. Financial Institutions Legal Division.
 - (b) Crime Victims Compensation Board.
 - (c) Board of Claims.
 - (d) Kentucky Board of Tax Appeals.
 - (e) Kentucky Boxing and Wrestling Authority.
 - (f) Kentucky Horse Racing Commission.
 1. Division of Licensing.
 2. Division of Incentives and Development.
 3. Division of Veterinary Services.
 4. Division of Security and Enforcement.
 - (g) Department of Alcoholic Beverage Control.
 1. Division of Distilled Spirits.
 2. Division of Malt Beverages.
 3. Division of Enforcement.
 - (h) Department of Charitable Gaming.
 1. Division of Licensing and Compliance.
 2. Division of Enforcement.
 - (i) Department of Financial Institutions.
 1. Division of Depository Institutions.
 2. Division of Non-Depository Institutions.
 3. Division of Securities.
 - (j) Department of Housing, Buildings and Construction.
 1. Division of Fire Prevention.
 2. Division of Plumbing.
 3. Division of Heating, Ventilation, and Air Conditioning.
 4. Division of Building Code Enforcement.
 - (k) Department of Insurance.
 1. Property and Casualty Division.
 2. Health and Life Division.

3. Division of Financial Standards and Examination.
 4. Division of Agent Licensing.
 5. Division of Insurance Fraud Investigation.
 6. Consumer Protection Division.
 7. Division of Kentucky Access.
- (l) Office of Occupations and Professions.
- (5) Labor Cabinet.
 - (a) Office of the Secretary.
 1. Division of Management Services.
 2. Office of General Counsel.
 - (b) Office of General Administration and Program Support for Shared Services.
 1. Division of Human Resource Management.
 2. Division of Fiscal Management.
 3. Division of Budgets.
 4. Division of Information Services.
 - (c) Office of Inspector General for Shared Services.
 - (d) Department of Workplace Standards.
 1. Division of Employment Standards, Apprenticeship, and Mediation.
 2. Division of Occupational Safety and Health Compliance.
 3. Division of Occupational Safety and Health Education and Training.
 4. Division of Workers' Compensation Funds.
 - (e) Department of Workers' Claims.
 1. Office of General Counsel for Workers' Claims.
 2. Office of Administrative Law Judges.
 3. Division of Claims Processing.
 4. Division of Security and Compliance.
 5. Division of Information and Research.
 6. Division of Ombudsman and Workers' Compensation Specialist Services.
 7. Workers' Compensation Board.
 8. Workers' Compensation Advisory Council.
 9. Workers' Compensation Nominating Commission.
 - (f) Workers' Compensation Funding Commission.
 - (g) Kentucky Labor-Management Advisory Council.
 - (h) Occupational Safety and Health Standards Board.
 - (i) Prevailing Wage Review Board.
 - (j) Apprenticeship and Training Council.
 - (k) State Labor Relations Board.
 - (l) Employers' Mutual Insurance Authority.

- (m) Kentucky Occupational Safety and Health Review Commission.
- (6) Transportation Cabinet:
 - (a) Department of Highways.
 - 1. Office of Project Development.
 - 2. Office of Project Delivery and Preservation.
 - 3. Office of Highway Safety.
 - 4. Highway District Offices One through Twelve.
 - (b) Department of Vehicle Regulation.
 - (c) Department of Aviation.
 - (d) Department of Rural and Municipal Aid.
 - 1. Office of Local Programs.
 - 2. Office of Rural and Secondary Roads.
 - (e) Office of the Secretary.
 - 1. Office of Public Affairs.
 - 2. Office for Civil Rights and Small Business Development.
 - 3. Office of Budget and Fiscal Management.
 - 4. Office of Inspector General.
 - (f) Office of Support Services.
 - (g) Office of Transportation Delivery.
 - (h) Office of Audits.
 - (i) Office of Human Resource Management.
 - (j) Office of Information Technology.
 - (k) Office of Legal Services.
- (7) Cabinet for Economic Development:
 - (a) Office of the Secretary.
 - 1. Office of Legal Services.
 - 2. Department for Business Development.
 - a. Office of Entrepreneurship.
 - i. Commission on Small Business Advocacy.
 - b. Office of Research and Public Affairs.
 - c. Bluegrass State Skills Corporation.
 - 3. Office of Financial Services.
 - a. Kentucky Economic Development Finance Authority.
 - b. Division of Finance and Personnel.
 - c. Division of Network Administration.
 - d. Compliance Division.
 - e. Incentive Assistance Division.
- (8) Cabinet for Health and Family Services:
 - (a) Office of the Secretary.

- (b) Office of Health Policy.
 - (c) Office of Legal Services.
 - (d) Office of Inspector General.
 - (e) Office of Communications and Administrative Review.
 - (f) Office of the Ombudsman.
 - (g) Office of Policy and Budget.
 - (h) Office of Human Resource Management.
 - (i) Office of Administrative and Technology Services.
 - (j) Department for Public Health.
 - (k) Department for Medicaid Services.
 - (l) Department for Behavioral Health, Developmental and Intellectual Disabilities.
 - (m) Department for Aging and Independent Living.
 - (n) Department for Community Based Services.
 - (o) Department for Income Support.
 - (p) Department for Family Resource Centers and Volunteer Services.
 - (q) Kentucky Commission on Community Volunteerism and Service.
 - (r) Kentucky Commission for Children with Special Health Care Needs.
 - (s) Governor's Office of Electronic Health Information.
- (9) Finance and Administration Cabinet:
- (a) Office of General Counsel.
 - (b) Office of the Controller.
 - (c) Office of Administrative Services.
 - (d) Office of Public Information.
 - (e) Office of Policy and Audit.
 - (f) Department for Facilities and Support Services.
 - (g) Department of Revenue.
 - (h) Commonwealth Office of Technology.
 - (i) State Property and Buildings Commission.
 - (j) Office of Equal Employment Opportunity and Contract Compliance.
 - (k) Kentucky Employees Retirement Systems.
 - (l) Commonwealth Credit Union.
 - (m) State Investment Commission.
 - (n) Kentucky Housing Corporation.
 - (o) Kentucky Local Correctional Facilities Construction Authority.
 - (p) Kentucky Turnpike Authority.
 - (q) Historic Properties Advisory Commission.
 - (r) Kentucky Tobacco Settlement Trust Corporation.
 - (s) Kentucky Higher Education Assistance Authority.

- (t) Kentucky River Authority.
- (u) Kentucky Teachers' Retirement System Board of Trustees.
- (v) Executive Branch Ethics Commission.
- (10) Tourism, Arts and Heritage Cabinet:
 - (a) Kentucky Department of Travel and Tourism.
 - 1. Division of Tourism Services.
 - 2. Division of Marketing and Administration.
 - 3. Division of Communications and Promotions.
 - (b) Kentucky Department of Parks.
 - 1. Division of Information Technology.
 - 2. Division of Human Resources.
 - 3. Division of Financial Operations.
 - 4. Division of Facilities Management.
 - 5. Division of Facilities Maintenance.
 - 6. Division of Customer Services.
 - 7. Division of Recreation.
 - 8. Division of Golf Courses.
 - 9. Division of Food Services.
 - 10. Division of Rangers.
 - 11. Division of Resort Parks.
 - 12. Division of Recreational Parks and Historic Sites.
 - (c) Department of Fish and Wildlife Resources.
 - 1. Division of Law Enforcement.
 - 2. Division of Administrative Services.
 - 3. Division of Engineering.
 - 4. Division of Fisheries.
 - 5. Division of Information and Education.
 - 6. Division of Wildlife.
 - 7. Division of Public Affairs.
 - (d) Kentucky Horse Park.
 - 1. Division of Support Services.
 - 2. Division of Buildings and Grounds.
 - 3. Division of Operational Services.
 - (e) Kentucky State Fair Board.
 - 1. Office of Administrative and Information Technology Services.
 - 2. Office of Human Resources and Access Control.
 - 3. Division of Expositions.
 - 4. Division of Kentucky Exposition Center Operations.
 - 5. Division of Kentucky International Convention Center.

6. Division of Public Relations and Media.
 7. Division of Venue Services.
 8. Division of Personnel Management and Staff Development.
 9. Division of Sales.
 10. Division of Security and Traffic Control.
 11. Division of Information Technology.
 12. Division of the Louisville Arena.
 13. Division of Fiscal and Contract Management.
 14. Division of Access Control.
- (f) Office of the Secretary.
1. Office of Finance.
 2. Office of Research and Administration.
 3. Office of Governmental Relations and Tourism Development.
 4. Office of the Sports Authority.
 5. Kentucky Sports Authority.
- (g) Office of Legal Affairs.
- (h) Office of Human Resources.
- (i) Office of Public Affairs and Constituent Services.
- (j) Office of Creative Services.
- (k) Office of Capital Plaza Operations.
- (l) Office of Arts and Cultural Heritage.
- (m) Kentucky African-American Heritage Commission.
- (n) Kentucky Foundation for the Arts.
- (o) Kentucky Humanities Council.
- (p) Kentucky Heritage Council.
- (q) Kentucky Arts Council.
- (r) Kentucky Historical Society.
1. Division of Museums.
 2. Division of Oral History and Educational Outreach.
 3. Division of Research and Publications.
 4. Division of Administration.
- (s) Kentucky Center for the Arts.
1. Division of Governor's School for the Arts.
- (t) Kentucky Artisans Center at Berea.
- (u) Northern Kentucky Convention Center.
- (v) Eastern Kentucky Exposition Center.
- (11) Personnel Cabinet:
- (a) Office of the Secretary.

- (b) Department of Human Resources Administration.
- (c) Office of Employee Relations.
- (d) Kentucky Public Employees Deferred Compensation Authority.
- (e) Office of Administrative Services.
- (f) Office of Legal Services.
- (g) Governmental Services Center.
- (h) Department of Employee Insurance.
- (i) Office of Diversity and Equality.
- (j) Center of Strategic Innovation.

III. Other departments headed by appointed officers:

- (1) Council on Postsecondary Education.
- (2) Department of Military Affairs.
- (3) Department for Local Government.
- (4) Kentucky Commission on Human Rights.
- (5) Kentucky Commission on Women.
- (6) Department of Veterans' Affairs.
- (7) Kentucky Commission on Military Affairs.
- (8) Office of Minority Empowerment.
- (9) Governor's Council on Wellness and Physical Activity.

➔Section 2. KRS 146.090 is amended to read as follows:

- (1) The secretary *of the*~~for~~ Energy and Environment *Cabinet*, with the approval of the Soil and Water Conservation Commission shall divide the state into nine (9) soil and water conservation areas which shall contain as nearly as practicable, an equal number of soil and water conservation districts;
- (2) The Soil and Water Conservation Commission shall consist of nine (9) members, not more than five (5) of whom shall be of the same political party, to be appointed by the secretary *of the*~~for~~ Energy and Environment *Cabinet* with the approval of the Governor;
- (3) One (1) member shall be appointed from each of the areas from a list of two (2) names submitted from each ~~such~~ area by the supervisors of the soil and water conservation districts that have their principal offices therein. All members shall be supervisors of soil and water conservation districts;
- (4) The term of office of each ~~such~~ member shall be four (4) years; provided that, whenever a member of the commission ceases to hold the office of district supervisor by virtue of which he is serving on the commission, his term of office as a member of the commission shall be terminated. In the case of any vacancy other than the one (1) caused by the expiration of a term, the secretary *of the*~~for~~ Energy and Environment *Cabinet*, with the approval of the Governor, shall appoint the successor from a list of two (2) names submitted by the supervisors of the soil and water conservation area which was represented by the former member. The successor shall also be a supervisor of a soil and water conservation district;
- (5) The members of the commission shall designate a chairman from among their members and may from time to time change such designation. The commission shall keep a record of its official actions. A majority of the commission shall constitute a quorum. The commission may call upon the Attorney General for ~~such~~ legal services as it may require. It may delegate to its chairman, any of its members, the director of the division, or any officer, employee, or agent, ~~such~~ powers and duties as it deems proper. Members of the commission shall receive no compensation for their services, but shall be entitled to expenses, including traveling expenses, necessarily incurred in discharging their duties;
- (6) The following persons are advisory members of the commission by virtue of their offices: the secretary *of the*~~for~~ Energy and Environment *Cabinet*, the Commissioner of Agriculture, the director of the agricultural

experiment station, the director of vocational education, and the state conservationist of the United States Department of Agriculture.

➔Section 3. KRS 146.100 is amended to read as follows:

- (1) The secretary *of the*~~for~~ Energy and Environment *Cabinet*, with the approval of the Soil and Water Conservation Commission shall appoint a director of the Division of Conservation ~~who shall be a graduate of a recognized agricultural college, with at least five (5) years practical~~ experience in professional agricultural activities and who shall serve as executive officer for the commission. The director shall serve at the will of, and receive~~such~~ compensation as may be determined by the secretary *of the*~~for~~ Energy and Environment *Cabinet* with the *advice*~~approval~~ of the Soil and Water Conservation Commission. ~~Before entering upon his duties, the director shall take the constitutional oath. The director shall hold no other public office or employment.~~ In addition to any other duties assigned to him *or her* by the secretary *of the*~~for~~ Energy and Environment *Cabinet*, the director shall exercise, subject to the approval of the secretary, general administrative supervision over all activities, employees and property of the commission;
- (2) The secretary *of the*~~for~~ Energy and Environment *Cabinet* may employ ~~such~~ other officers, employees, and agents, who shall serve at his *or her* will as he *or she* deems necessary, with the *advice*~~approval~~ of the Soil and Water Conservation Commission, and shall provide for surety bonds for members, the director, officers, employees or agents if entrusted with funds or property.

➔Section 4. KRS 146.110 is amended to read as follows:

- (1) The commission shall have the general power to take any action it may consider necessary or proper to assist soil and water conservation districts, agricultural districts, or watershed conservancy districts in carrying out their functions, powers, duties, and programs in accordance with the provisions of KRS Chapter 262, and for such purpose it may furnish financial and other aid to the districts and perform such services for them at their request as may be possible under available appropriations and resources;
- (2) The commission has all the powers and duties formerly possessed by the State Soil Conservation Committee;
- (3) The commission shall take any action it may consider necessary or proper in order to discharge for the state any of the state's functions, responsibilities, or duties relating to flood control, drainage, and other activities with respect to the conservation, utilization, or control of soil or water resources;
- (4) The commission may *request the Secretary of the Energy and Environment Cabinet to* promulgate those administrative regulations as may be necessary to the performance of its duties and may enter into and execute any agreements or legal instruments that may be necessary for these purposes, and *the commission*~~it~~ shall have the authority to acquire necessary supplies, materials, and equipment, and warehousing, servicing, and maintenance facilities for equipment.

➔Section 5. KRS 146.210 is amended to read as follows:

As used in KRS 146.210 to 146.360, the words listed herein shall have the following respective meanings, unless another or different meaning or intent shall be clearly indicated by the context:

- (1) "Stream or watercourse" shall mean a flowing body of water or a section or portion thereof, including rivers, streams, and creeks.
- (2) "Free flowing" shall mean existing or flowing in a natural condition without impoundment, diversion, straightening, riprapping, or other modification of the waterway. The existence, however, of low dams, diversion works, and other minor structures at the time any stream is proposed for inclusion in the Wild Rivers System shall not automatically bar its consideration for such inclusion; provided, that this shall not be construed to authorize or to be intended to encourage future construction of such structures within components of the Wild Rivers System.
- (3) "Road" shall mean a highway, a hard-surfaced road, or an improved or unimproved dirt road. The existence, however, of unimproved roads at the time any stream is proposed for inclusion in the Wild Rivers System shall not automatically bar its consideration for such inclusion; provided, that this shall not be construed to authorize or to be intended to encourage future construction of such roads where this would be contrary to the provisions of KRS 146.200 to 146.360.
- (4) "Wilderness type recreation" shall mean activities such as fishing, hunting, canoeing, camping, hiking, horseback riding, exploring, archaeological and scientific investigation, and scenic and aesthetic enjoyment, which utilizes and protects to the highest degree the primitive and natural values of the area.

- (5) "Visual horizon" shall mean the normal distance to which land and vegetative features can be unobstructedly viewed from the center of the stream.
- (6) "Access point" shall mean an area along the stream under public ownership, or under easement acquired by agreement with a private landowner. This area would be available for public recreational use including, but not limited to, the launching of boats, picnicking, and camping.
- (7) "Secretary" shall mean the secretary *of the*~~for~~ Energy and Environment *Cabinet* or the successor to that office.

➔Section 6. KRS 146.270 is amended to read as follows:

The Wild Rivers System shall be administered by the Energy and Environment Cabinet according to the policies and criteria set forth in KRS 146.200 to 146.360. The secretary ~~{for energy and environment}~~ shall adopt ~~{such}~~ rules or *promulgate administrative* regulations necessary for the preservation and enhancement of the stream areas as set forth in KRS 146.250, and for control of recreational, educational, scientific, and other uses of these areas in a manner that shall not impair them. In ~~{such}~~ administration primary emphasis shall be given to protecting aesthetic, scenic, historic, archaeologic, and scientific features of the area. The secretary shall develop a management plan for a designated stream area and shall publicize and hold public hearings and record the views expressed on each plan developed. Management plans for a given stream area may establish varying degrees of intensity for its protection, based on special attributes of each area, but shall follow the concepts embodied in KRS 146.230. No public use of lands within the boundaries of a designated wild river area in which the state has acquired an interest shall be permitted prior to the development of a management plan. Any ~~{such}~~ management plan shall be developed jointly with the Department of Fish and Wildlife Resources with respect to those aspects of *the*~~{such}~~ plan as relate to the jurisdiction of that department over fish and wildlife resources.

➔Section 7. KRS 146.280 is amended to read as follows:

- (1) Within the boundaries of a designated stream area, as established and authorized by the Kentucky General Assembly, the secretary *shall be*~~{for energy and environment is}~~ authorized and empowered to acquire by purchase, exercise of the rights of eminent domain, grant, gift, devise, or otherwise, the fee simple title, an easement, or any acceptable lesser interest in any lands, and by lease or conveyance, contract for the right to use and occupy any lands. Where property within such boundaries is owned by the federal government, the secretary can enter into agreements with the landowning agency concerning use of the property consistent with the objectives of KRS 146.200 to 146.360. Nothing in KRS 146.200 to 146.360 shall be construed to deprive a landowner of the fee simple title to or lesser interest in his property without just compensation.
- (2) The secretary ~~{for energy and environment}~~ may not exercise authority to acquire lands or interests in lands located within any incorporated city, village, or county when such entities have in force a duly adopted, valid ordinance or plan for the management, zoning and protection of such lands in accordance with the provisions of KRS 146.200 to 146.360.

➔Section 8. KRS 146.320 is amended to read as follows:

Nothing in KRS 146.200 to 146.360 shall preclude a component of the Wild Rivers System from becoming a part of the National Wild and Scenic Rivers System. The secretary *shall be*~~{for energy and environment is}~~ directed to encourage and assist any federal studies for inclusion of Kentucky streams in the National Wild and Scenic Rivers System. The secretary ~~{for energy and environment}~~ may enter into written cooperative agreements for joint federal-state or interstate administration of a Kentucky component of the National Wild and Scenic Rivers System, provided ~~{such}~~ agreements for the administration of water and land uses are not less restrictive than those set forth in KRS 146.200 to 146.360.

➔Section 9. KRS 146.330 is amended to read as follows:

The secretary ~~{for energy and environment}~~ may employ such technical, clerical, stenographic and other employees and assistants as are required to effectively carry out his duties and responsibilities as provided in KRS 146.200 to 146.360.

➔Section 10. KRS 146.415 is amended to read as follows:

As used in KRS 146.410 to 146.530:

- (1) "Natural area" means any area of land or water, or of both land and water, in public or private ownership, which either retains, or has reestablished to some degree in the judgment of the commission its natural character, though it need not be completely natural and undisturbed, or which has natural flora, fauna,

biological, ecological, geological, scenic or archaeological features of scientific, aesthetic, cultural or educational interest;

- (2) "Nature preserve" means a natural area, and land necessary for its protection, any estate, interest or right in which has been formally dedicated under the provisions of KRS 146.410 to 146.530 to be maintained as nearly as possible in its natural condition and to be used in a manner and under limitations consistent with its continued preservation, without impairment, disturbance or artificial development, for the public purposes of present and future scientific research, education, aesthetic enjoyment and habitat for plant and animal species and other natural objects;
- (3) "Articles of dedication" means the writing by which any estate, interest or right in a natural area is formally dedicated, as provided in KRS 146.410 to 146.530;
- (4) "Commission" means the Kentucky State Nature Preserves Commission;
- (5) "System" means the state system of nature preserves established under KRS 146.410 to 146.530;
- (6) "Cabinet" means the Energy and Environment Cabinet; ~~and~~
- (7) "Director" means the director of the Kentucky State Nature Preserves Commission; **and**
- (8) **"Secretary" means the secretary of the Energy and Environment Cabinet.**

➔Section 11. KRS 146.430 is amended to read as follows:

- (1) In order to effectuate and administer KRS 146.410 to 146.530, the ~~secretary~~~~commission~~ may **appoint**~~hire~~ a full-time director, **with the approval of the commission**, who shall be qualified by training and experience to perform the duties of this office and carry out the purpose of KRS 146.410 to 146.530, and who shall hold office at the pleasure of the ~~secretary~~~~commission~~. The salary of the director shall be determined by the ~~secretary~~~~commission~~. The ~~secretary~~~~director~~ shall, upon the advice and consent of the commission, employ and fix the compensation of such personnel as may be necessary to effectuate the provisions of KRS 146.410 to 146.530.
- (2) The director shall, upon the advice and consent of the commission **and the secretary**, provide for the allocation of the work and activities of all employees of the commission.

➔Section 12. KRS 146.485 is amended to read as follows:

In furtherance of the purposes of KRS 146.410 to 146.530, the commission shall have the following additional powers and duties:

- (1) To seek and approve the dedication of nature preserves as part of the system;
- (2) To make and publish policies~~;~~ **and** rules, and **to recommend to the secretary the promulgation of administrative** regulations for the selection, acquisition, management, protection, and use of natural areas and nature preserves, and for the conduct of commission affairs;
- (3) To cooperate with and to contract with any public body of this state, any public body of any other state, any private organization, any individual, and the federal government and its agencies;
- (4) To purchase land from a willing seller without the use of the powers of condemnation or eminent domain, which said powers are expressly denied to the commission;
- (5) To make reasonable investigations as to the ownership of any lands which it judges may be appropriate for acquisition;
- (6) To maintain a state registry of natural areas, an inventory of natural types, flora, and fauna, and other records of natural areas and nature preserves within the Commonwealth;
- (7) To promote the coordination of all departments, divisions and branches of state, county and city governments within the Commonwealth which relate to nature preserves;
- (8) To study the operation of all laws, rules, regulations, orders, and governmental policies affecting conservation of natural resources pertaining to natural areas, and to recommend to the Governor, and to the General Assembly, new legislation, rules, regulations, orders and policies in the interest of correcting natural resource conservation problems pertaining to natural areas and nature preserves;

- (9) To provide a central clearing house of information for environmental and conservation matters and to promote educational programs pertaining to natural areas and nature preserves;
- (10) To conduct research, investigations, public hearings, and interpretative programs and to publish and disseminate information to the general public pertaining to natural areas and nature preserves;
- (11) To supervise the protection, management, and use of nature preserves and to enforce and administer rules and regulations pertaining thereto;
- (12) To promote, study, investigate, recommend, encourage, advise and assist in the preservation, protection, and management of natural areas;
- (13) To report to the Governor and General Assembly on proposed legislation, policies, regulations, or actions, public or private, which may significantly affect the quality of the natural ecology or the human environment in the Commonwealth. Such report shall include an evaluation of environmental and ecological effects, and shall compare any adverse effects of the proposed action against possible social benefits. The report shall describe and recommend appropriate alternatives, which avoid significant adverse effects on the quality of the natural ecology of natural areas;
- (14) To submit to the Governor and members of the General Assembly, a report on or before January 15, 1977, and by the same date each second year thereafter, detailing the condition of each nature preserve in the system, and each registered natural area, and make ~~such~~ other reports and recommendations as it may deem advisable.

➔Section 13. KRS 147A.031 is amended to read as follows:

- (1) The Department for Local Government, in cooperation with cities, counties, waste management districts, waste industries, *and* the Energy and Environment Cabinet, ~~and the Environmental Quality Commission,~~ shall develop procedures designed to resolve conflicts resulting from municipal solid waste management facility siting and operation. The procedures shall address:
 - (a) Resolution of conflicts associated with multijurisdictional municipal solid waste management facilities, including the use of such techniques as negotiation, mediation, or arbitration to address issues, including but not limited to host community compensation and collection and disposal fees; and
 - (b) Resolution of issues, except those relating to permit conditions imposed by the cabinet, resulting from municipal solid waste management facility siting and operation, including the use of such techniques as negotiation, mediation, or arbitration to address concerns of those persons and landowners who are directly affected by the facility's location and operation. Issues which may be addressed include but are not limited to the following:
 1. Operational issues, such as hours of operation;
 2. Recycling and composting efforts that may be implemented;
 3. Protection of property values;
 4. Traffic routing and road maintenance; and
 5. Establishment of local advisory committees.
- (2) The Department for Local Government shall adopt administrative regulations to implement the provisions of subsection (1) of this section.
- (3) Nothing in this section shall be construed to abridge any rights or remedies provided by KRS Chapters 109 and 224, or at common law.

➔Section 14. KRS 151.293 is amended to read as follows:

- (1) Within sixty (60) days of completion of an on-site inspection of an existing dam, the cabinet may either grant a certificate of inspection, or deny the certificate of inspection and notify the owner in writing, stating the reasons for denial.
- (2) In deciding whether or not a certificate of inspection should be issued, the cabinet shall take into account all pertinent facts and conditions, but shall not issue a certificate unless the following conditions have been met:
 - (a) The proposed action in the judgment of the cabinet will be conducted in such a way that the safety of the public is adequately provided for;
 - (b) All information requested by the cabinet has been provided; and

- (c) The changed flow of the stream or level of the reservoir will not significantly interfere with a beneficial use by other water users.
- (3) In granting a certificate of inspection, the cabinet may impose such conditions relating to the inspection, operation, maintenance, alteration, repair, use, or control of a dam or reservoir as it determines are necessary for the protection of public health, safety or welfare.
- (4) The cabinet may establish hazard categories for dams based on downstream floodplain use, size, or type of dam, or other criteria, and may impose different conditions or types of conditions on the approval of dams or reservoirs in the different categories. The hazard categories in all cases shall be based only on the actual risk imposed by the dam.
- (5) The cabinet may utilize the results and information provided by or for the United States Army Corps of Engineers pursuant to the provisions of Public Law 92-367 if the information is not more than one (1) year old at the time of use.
- (6) Certificates of inspection shall be for a definite period of time, not to exceed five (5) years, as determined by the cabinet and stated on the certificate. In determining the period of inspection, the cabinet may take account of any circumstances pertinent to the situation, including, but not limited to, the size and type of dam, topography, geology, soil conditions, hydrology, climate, use of the reservoir, the lands lying in the floodplain downstream from the dam, and the hazard category of the dam.
- (7) The cabinet may modify a certificate of inspection or the conditions attached to it. Such modification shall become effective ninety (90) days following issuance by the cabinet of a revised certificate, except when the cabinet finds that a state of emergency exists and that life or property would be endangered by delay. In case of an emergency declared by the cabinet, the new conditions shall be effective immediately.
- (8) Specific guidelines for issuance and renewal of certificate of inspection for earth embankment dams shall be provided by administrative regulations which shall address at least the following areas:
- (a) The hydraulic capacity requirements for each category of dam shall be provided. The probable maximum precipitation as determined by the United States Weather Service shall be used only where it can be clearly demonstrated that failure of the dam by overtopping would result in greater loss of life than would occur if the dam did not exist and only for small watersheds, since such large rainfall events are not expected to occur over large areas. The cabinet shall provide a table of factors that reduce this rainfall appropriately for larger watersheds;
- (b) Minimum criteria for the embankment stability of the dam, including consideration of such factors as steepness of slopes, strength of materials, and earthquake loadings shall be specified;
- (c) Variance procedures for applicable hydraulic and stability considerations shall be included for, but not limited to, variances to hydraulic criteria where only a small number of persons are at risk and where a reliable, effective emergency preparedness system will be installed; where a risk analysis demonstrates that at rainfall levels less than that specified in the administrative regulation there is no risk that actually results from the dam; where an owner can demonstrate that the dam substantially conforms to the criteria in the administrative regulation; and, for dams that pose a risk of economic damages only, where the owner provides indemnification against potential damages;
- (d) Before any variance is issued, the affected public shall be notified of the cabinet's intended action and allowed to make known any objections or concerns that it might have;
- (e) Whenever the owner of a dam has requested a variance and the request has not been granted or has not been granted in the manner requested, the owner or aggrieved party may petition the cabinet to have the variance request **reviewed and a final determination made by the cabinet**~~and the cabinet's preliminary decision on it reviewed by an unbiased, three (3) person panel of qualified experts to be named by the Environmental Quality Commission in consultation with the Kentucky Water Research Institute. The panel shall make nonbinding recommendations to the cabinet with regard to these matters. After reviewing the recommendations, the cabinet will make a final determination on the variance~~. If not satisfied by the **final determination of the cabinet**~~finding of the panel or the determination of the cabinet~~, the party may seek administrative remedy from the cabinet under the provisions of KRS 151.182;
- (f) Items of general maintenance of a dam shall include provisions for at least the following: dams shall be mowed regularly; dams shall be free of trees and brush; animal burrows shall not be allowed on dams;

slides, erosion and cracks that could pose problems to dams shall be properly repaired; action shall be taken to alleviate excessive wetness and abnormal seepage; appurtenances that are necessary for the proper operation and maintenance of the dam shall be kept in proper working condition;

- (g) Provisions shall be made whereby the cabinet will allow for staged renovation of dams that do not meet the criteria of the administrative regulations and shall clearly identify the circumstances under which staging is allowable and set a maximum time limit that may be allowed for bringing the dam into compliance. Other provisions shall require the owner to develop and maintain an emergency action plan, to provide interim insurance, bonding or other indemnification, and on a frequent basis as specified by the cabinet, to inspect the dam and report to the cabinet the status of any facilities or conditions of concern; and
 - (h) If the cabinet has previously required a dam to be upgraded to meet a certain dam safety standard, it shall not require that the dam be upgraded again because of a change in the administrative regulation with regard to that same standard. However, if the owner proposes substantial construction on the dam or if the dam must be repaired due to indications of distress or to partial failure, the cabinet may require the owner to bring the dam into full compliance with current standards.
- (9) The cabinet shall establish guidelines on a case-by-case basis for gravity dams and other types of dams that are unusual to the Commonwealth, and shall follow recognized engineering practice.
 - (10) Plans and specifications submitted to the cabinet shall be the responsibility of and signed by an engineer licensed by the Commonwealth and experienced in the design and construction of dams, as determined by the cabinet.

➔Section 15. KRS 152.713 is amended to read as follows:

- (1) For purposes of this section, "renewable energy" has the same meaning as in KRS 154.20-400.
- (2) The Center for Renewable Energy Research and Environmental Stewardship is hereby created ~~and attached to the Energy and Environment Cabinet for administrative purposes. The Energy and Environment Cabinet shall provide consultation, coordination services, technical assistance, and staff support to the board of directors created in subsection (4) of this section, on an as needed basis, and perform other necessary administrative functions until the center is deemed fully operational. The secretary of the cabinet or his or her designee shall coordinate the development of the center and act as the chair of the board of directors created in subsection (4) of this section until the board is established and is operational.~~
- (3) The Center for Renewable Energy Research and Environmental Stewardship shall:
 - (a) Provide leadership, research, support, and policy development in renewable energy;
 - (b) Advance the goal of renewable energy;
 - (c) Promote technologies, practices, and programs that increase efficiency in energy utilization in homes, businesses, and public buildings;
 - (d) Emphasize energy policies that would result in cost-conscious, responsible development of Kentucky's energy resources and a commitment to environmental quality;
 - (e) Promote partnerships among the state's postsecondary education institutions, private industry, and nonprofit organizations to actively pursue federal research and development resources that are dedicated to renewable energy;
 - (f) Promote the continued development of public-private partnerships dedicated to promoting energy efficiency through education and outreach;
 - (g) Establish research priorities with approval of the board of directors created in subsection (4) of this section, relating to renewable energy, and develop procedures and processes for awarding research grants to eligible recipients as defined by the board and to the extent that funding is available;
 - (h) Collaborate with the Department for Energy Development and Independence to avoid duplication of efforts, provide appropriate data and information, and support the implementation of Kentucky's comprehensive energy strategy; and
 - (i) Carry out other activities to further the efficient and environmentally responsible use of renewable energy.

- (4) (a) There is hereby created a governing board of directors to provide policy direction, establish a strategic research agenda and operating policies, and provide financial and operational oversight for the Center for Renewable Energy Research and Environmental Stewardship. The initial board shall be appointed within sixty (60) days following July 15, 2008.
- (b) The board shall consist of thirteen (13) members:
1. One (1) member to represent the Department for Energy Development and Independence as designated by its commissioner;
 2. Three (3) members representing postsecondary education interests who shall be appointed by the Governor;
 3. One (1) member to be designated by the governing body of the Kentucky Science and Technology Corporation;
 4. One (1) member from an energy conservation organization who shall be appointed by the Governor;
 5. The secretary of the Economic Development Cabinet or the secretary's designee;
 6. One (1) member who shall be a recognized consumer advocate to be appointed by the Governor;
 7. Three (3) members to represent companies that are focused on renewable energy who shall be appointed by the Governor;
 8. One (1) member who shall represent environmental interests to be appointed by the Governor; and
 9. One (1) member who shall be selected to represent local government interests to be appointed by the Governor.
- (c) The members appointed by the Governor shall serve two (2) year terms and may be reappointed. The members representing specific agencies shall serve for as long as the respective agencies determine appropriate.
- (5) The board shall:
- (a) Adopt operating procedures, including a meeting schedule;
 - (b) Meet at least quarterly;
 - (c) Select a chair and co-chair annually who may be reelected, not to exceed three (3) consecutive terms;
 - (d) Establish working groups or subcommittees of the board as the board determines is needed;
 - (e) Establish qualifications and job descriptions, set the compensation and benefits, and employ staff as it determines necessary to carry out its responsibilities under this section; and
 - (f) Provide an annual program and financial report to the Legislative Research Commission within ninety (90) days of the close of each fiscal year.

➔Section 16. KRS 154.47-005 is amended to read as follows:

As used in this subchapter, unless the context clearly indicates otherwise:

- (1) "Approved network" means a flexible manufacturing network approved by the cabinet in accordance with KRS 154.47-040;
- (2) "Cabinet" means the Cabinet for Economic Development;
- (3) "Center" means the Quicksand Wood Utilization Center located in Breathitt County, Kentucky;
- (4) "Certified tree farmer" means a person whose tree farm is certified by the Kentucky Tree Farm Committee and approved by the American Forest Foundation;
- (5) ~~["Council" means the Kentucky Forest Products Council as created in KRS 154.47-110;~~
- (6) ~~]"Flexible manufacturing network" or "network" means an affiliation of secondary wood products businesses as provided by KRS 154.47-040;~~

- (6)~~(7)~~ "Forest steward" means a person whose forest property is certified as a stewardship forest and approved by the Division of Forestry of the Department for Natural Resources;
- (7)~~(8)~~ "Procurement area" means an area specified by the applicant in a radius of miles from the applicant's site of operations from which the applicant acquires raw wood products;
- (8)~~(9)~~ "Secondary wood products industry" means businesses that compose that segment of the forest products industry that manufacture, assemble, process, or produce wood into a finished or semifinished product; however, the "secondary wood products industry" does not include primary wood products operations such as logging, sawmilling, chip milling, veneer milling, or pulp milling. Businesses that include both primary and secondary wood products operations are deemed to be within the secondary wood products industry only in regard to their secondary wood products operations; and
- (9)~~(10)~~ "Wood industry hub" or "hub" means a system in which the technical and workforce training needs of the secondary wood products industry are integrated.

➔Section 17. KRS 154.20-170 is amended to read as follows:

- (1) Industrial entities, agricultural business entities, business enterprises, or private sector firms which are members of a business network within the meaning of KRS 154.1-010 in a targeted industrial sector as set forth in the state strategic plan for economic development as prescribed in KRS 154.10-120, and businesses that compose the secondary wood products industry as defined in KRS 154.47-005(8)~~(9)~~, shall be given priority consideration under state economic development loan, grant, and incentive programs administered by the Kentucky Economic Development Finance Authority.
- (2) Notwithstanding the provisions of subsection (1) of this section, highest priority consideration under state economic development loan, grant, and incentive programs administered by the authority shall be given to those projects that are located in counties of Kentucky which have had an average countywide rate of unemployment of fifteen percent (15%) or greater in the most recent twelve (12) consecutive months for which unemployment figures are available, on the basis of the final unemployment figures calculated by the Office of Employment and Training within the Department of Workforce Investment in the Education and Workforce Development Cabinet.

➔Section 18. KRS 224.10-022 is amended to read as follows:

There is established in the Office of the Secretary an Office of Administrative Hearings and an Office of Legislative and Intergovernmental Affairs. Each of these offices shall be headed by an executive director appointed by the secretary with the approval of the Governor as required by KRS 12.050. There is also established in the Office of the Secretary an Office of General Counsel, headed by a general counsel appointed by the secretary with the approval of the Governor in accordance with KRS 12.050 and 12.210. The executive directors and the general counsel shall be directly responsible to the secretary and shall perform the functions, powers, and duties as provided by law and as prescribed by the secretary. ~~The Environmental Quality Commission, which shall be headed by an executive director appointed by the secretary with the approval of the Governor, shall be attached to the Office of the Secretary.~~ The Kentucky State Nature Preserves Commission, which shall be headed by a director, and the Mine Safety Review Commission, whose members shall be appointed by the Governor with the consent of the General Assembly, shall be attached to the Office of the Secretary. The Kentucky Public Service Commission, which shall be headed by an executive director appointed by the commission in accordance with KRS 278.100, shall be attached to the Office of the Secretary for administrative purposes.

➔Section 19. KRS 224.1-010 is amended to read as follows:

As used in this chapter unless the context clearly indicates otherwise:

- (1) "Air contaminant" includes smoke, dust, soot, grime, carbon, or any other particulate matter, radioactive matter, noxious acids, fumes, gases, odor, vapor, or any combination thereof;
- (2) "Air contaminant source" means any and all sources of emission of air contaminants, whether privately or publicly owned or operated. Without limiting the generality of the foregoing, this term includes all types of business, commercial and industrial plants, works, shops, and stores, and heating and power plants and stations, buildings and other structures of all types, including single and multiple family residences, apartments, houses, office buildings, public buildings, hotels, restaurants, schools, hospitals, churches, and other institutional buildings, automobiles, trucks, tractors, buses and other motor vehicles, garages and vending and service locations and stations, railroad locomotives, ships, boats and other waterborne craft, portable fuel-burning equipment, incinerators of all types (indoor and outdoor), refuse dumps and piles, and all stack and other chimney outlets from any of the foregoing;

- (3) "Air pollution" means the presence in the outdoor atmosphere of one (1) or more air contaminants in sufficient quantities and of such characteristics and duration as is or threatens to be injurious to human, plant, or animal life, or to property, or which unreasonably interferes with the comfortable enjoyment of life or property;
- (4) "Closure" means the time at which a waste treatment, storage, or disposal facility permanently ceases to accept wastes, and includes those actions taken by the owner or operator of the facility to prepare the site for post-closure monitoring and maintenance or to make it suitable for other uses;
- (5) ~~["Commission" means the Environmental Quality Commission;~~
- ~~(6) —]~~"Compost" means solid waste which has undergone biological decomposition of organic matter, been disinfected using composting or similar technologies, been stabilized to a degree which is potentially beneficial to plant growth and which is approved for use or sale as a soil amendment, artificial topsoil, growing medium amendment, or other similar uses;
- ~~(6)(7)~~ "Composting" means the process by which biological decomposition of organic solid waste is carried out under controlled aerobic conditions, and which stabilizes the organic fraction into a material which can easily and safely be stored, handled, and used in an environmentally acceptable manner:
- (a) "Composting" may include a process which creates an anaerobic zone within the composting material;
- (b) "Composting" does not include simple exposure of solid waste under uncontrolled conditions resulting in natural decay;
- ~~(7)(8)~~ "Demonstration" means the initial exhibition of a new technology, process or practice or a significantly new combination or use of technologies, processes or practices, subsequent to the development stage, for the purpose of proving technological feasibility and cost effectiveness;
- ~~(8)(9)~~ "Cabinet" means the Energy and Environment Cabinet;
- ~~(9)(10)~~ "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any waste into or on any land or water so that such waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters;
- ~~(10)(11)~~ "District" means an air pollution control district as provided for in KRS Chapter 77;
- ~~(11)(12)~~ "Effluent limitations" means any restrictions or prohibitions established under state law which include, but are not limited to, effluent limitations, standards of performance for new sources, and toxic effluent standards on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged into waters;
- ~~(12)(13)~~ "Generator" means any person, by site, whose act or process produces waste;
- ~~(13)(14)~~ "Materials recovery facility" means a solid waste management facility that provides for the extraction from solid waste of recyclable materials, materials suitable for use as a fuel or soil amendment, or any combination of those materials;
- ~~(14)(15)~~ "Municipal solid waste disposal facility" means any type of waste site or facility where the final deposition of any amount of municipal solid waste occurs, whether or not mixed with or including other waste allowed under Subtitle D of the Federal Resource Conservation and Recovery Act of 1976, as amended, and includes, but is not limited to, incinerators and waste-to-energy facilities that burn municipal solid waste, and contained and residential landfills, but does not include a waste site or facility which is operated exclusively by a solid waste generator on property owned by the solid waste generator which accepts only industrial solid waste from the solid waste generator or industrial solid waste generated at another facility owned and operated by the generator or wholly-owned subsidiary, or a medical waste incinerator which is owned, operated, and located on the property of a hospital or university which is regulated by the cabinet and used for the purpose of treatment, prior to landfill, of medical waste received from the generator exclusively or in combination with medical waste generated by professionals or facilities licensed or regulated or operated by the Commonwealth;
- ~~(15)(16)~~ "Municipal solid waste reduction" means source reduction, waste minimization, reuse, recycling, composting, and materials recovery;
- ~~(16)(17)~~ "Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, federal agency, state agency, city, commission, political subdivision of the Commonwealth, or any interstate body;

- ~~(17)~~~~(18)~~ "Post-closure monitoring and maintenance" means the routine care, maintenance, and monitoring of a solid waste or hazardous waste treatment, storage, or disposal facility following closure of the facility;
- ~~(18)~~~~(19)~~ "Publicly owned treatment works" means any device or system used in the treatment (including recycling and recovery) of municipal sewage or industrial wastes of a liquid nature which is owned by the Commonwealth or a political subdivision of the Commonwealth;
- ~~(19)~~~~(20)~~ "Recovered material" means those materials, including but not limited to compost, which have known current use, reuse, or recycling potential, which can be feasibly used, reused, or recycled, and which have been diverted or removed from the solid waste stream for sale, use, reuse, or recycling, whether or not requiring subsequent separation and processing, but does not include materials diverted or removed for purposes of energy recovery or combustion except refuse-derived fuel (RDF), which shall be credited as a recovered material in an amount equal to that percentage of the municipal solid waste received on a daily basis at the processing facility and processed into RDF; but not to exceed fifteen percent (15%) of the total amount of the municipal solid waste received at the processing facility on a daily basis. Notwithstanding any provision of law to the contrary, tire-derived fuel, as defined in subsection (54) of this section, shall be considered a recovered material;
- ~~(20)~~~~(21)~~ "Recovered material processing facility" means a facility engaged solely in the storage, processing, and resale or reuse of recovered material, but does not mean a solid waste management facility if solid waste generated by a recovered material processing facility is managed pursuant to this chapter and administrative regulations adopted by the cabinet;
- ~~(21)~~~~(22)~~ "Recycling" means any process by which materials which would otherwise become solid waste are collected, separated, or processed and reused or returned to use in the form of raw materials or products, including refuse-derived fuel when processed in accordance with administrative regulations established by the cabinet, but does not include the incineration or combustion of materials for the recovery of energy;
- ~~(22)~~~~(23)~~ "Refuse-derived fuel" means a sized, processed fuel product derived from the extensive separation of municipal solid waste, which includes the extraction of recoverable materials for recycling and the removal of nonprocessables such as dirt and gravel prior to processing the balance of the municipal solid waste into the refuse-derived fuel product;
- ~~(23)~~~~(24)~~ "Secretary" means the secretary of the Energy and Environment Cabinet;
- ~~(24)~~~~(25)~~ "Sewage system" means individually or collectively those constructions or devices used for collecting, pumping, treating, and disposing of liquid or waterborne sewage, industrial wastes, or other wastes;
- ~~(25)~~~~(26)~~ "Termination" means the final actions taken by the cabinet as to a solid waste or hazardous waste treatment, storage, or disposal facility when formal responsibilities for post-closure monitoring and maintenance cease;
- ~~(26)~~~~(27)~~ "Waste site or facility" means 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;
- ~~(27)~~~~(28)~~ "Storage" means the containment of wastes, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such wastes;
- ~~(28)~~~~(29)~~ "Transportation" means any off-site movement of waste by any mode, and any loading, unloading, or storage incidental thereto;
- ~~(29)~~~~(30)~~ "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous;
- ~~(30)~~~~(31)~~ "Waste" means:
- (a) "Solid waste" means any garbage, refuse, sludge, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining (excluding coal mining wastes, coal mining by-products, refuse, and overburden), agricultural operations, and from community activities, but does not include those materials including, but not limited to, sand, soil, rock,

gravel, or bridge debris extracted as part of a public road construction project funded wholly or in part with state funds, recovered material, tire-derived fuel, special wastes as designated by KRS 224.50-760, solid or dissolved material in domestic sewage, manure, crops, crop residue, or a combination thereof which are placed on the soil for return to the soil as fertilizers or soil conditioners, or solid or dissolved material in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923):

1. "Household solid waste" means solid waste, including garbage and trash generated by single and multiple family residences, hotels, motels, bunkhouses, ranger stations, crew quarters, and recreational areas such as picnic areas, parks, and campgrounds, but it does not include tire-derived fuel;
 2. "Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other service and nonmanufacturing activities, excluding tire-derived fuel and household and industrial solid waste;
 3. "Industrial solid waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste or a special waste as designated by KRS 224.50-760, including, but not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer or agricultural chemicals; food and related products or by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products, except tire-derived fuel; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment; and
 4. "Municipal solid waste" means household solid waste and commercial solid waste; and
- (b) "Hazardous waste" means any discarded material or material intended to be discarded or substance or combination of such substances intended to be discarded, in any form which because of its quantity, concentration or physical, chemical or infectious characteristics may cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed;
- ~~(31)~~~~(32)~~ "Waste management district" means any county or group of counties electing to form under the provisions of KRS Chapter 109 and operate in conformance with the provisions of KRS Chapter 109 and with Section 4006, Resource Conservation and Recovery Act of 1976, as amended (Public Law 94-580);
- ~~(32)~~~~(33)~~ "Water" or "waters of the Commonwealth" means and includes any and all rivers, streams, creeks, lakes, ponds, impounding reservoirs, springs, wells, marshes, and all other bodies of surface or underground water, natural or artificial, situated wholly or partly within or bordering upon the Commonwealth or within its jurisdiction;
- ~~(33)~~~~(34)~~ "Water pollution" means the alteration of the physical, thermal, chemical, biological, or radioactive properties of the waters of the Commonwealth in such a manner, condition, or quantity that will be detrimental to the public health or welfare, to animal or aquatic life or marine life, to the use of such waters as present or future sources of public water supply or to the use of such waters for recreational, commercial, industrial, agricultural, or other legitimate purposes;
- ~~(34)~~~~(35)~~ "Pollutant" means and includes dredged spoil, solid waste, incinerator residue, sewage, sewage sludge, garbage, chemical, biological or radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, industrial, municipal or agricultural waste, and any substance resulting from the development, processing, or recovery of any natural resource which may be discharged into water;
- ~~(35)~~~~(36)~~ "NPDES" means National Pollutant Discharge Elimination System;
- ~~(36)~~~~(37)~~ "Manifest" means the form used for identifying the quantity, composition, and the origin, routing, and destination of waste during its transportation from the point of generation to the point of disposal, treatment, or storage;

- ~~(37)~~~~(38)~~ "Open dump" means any facility or site for the disposal of solid waste which does not have a valid permit issued by the cabinet or does not meet the environmental performance standards established under regulations promulgated by the cabinet;
- ~~(38)~~~~(39)~~ "Solid waste management" means 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;
- ~~(39)~~~~(40)~~ "Solid waste management area" or "area" means any geographical area established or designated by the cabinet in accordance with the provisions of this chapter;
- ~~(40)~~~~(41)~~ "Solid waste management facility" means 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;
- ~~(41)~~~~(42)~~ "Hazardous constituent" shall conform to the requirements of the Resource Conservation and Recovery Act (RCRA), as amended;
- ~~(42)~~~~(43)~~ "Land disposal" includes but is not limited to any placement of hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave;
- ~~(43)~~~~(44)~~ "Key personnel" means an officer, partner, director, manager, or shareholder of five percent (5%) or more of stock or financial interest in a corporation, partnership, or association or parent, subsidiary, or affiliate corporation and its officers, directors, or shareholders of five percent (5%) or more of stock or financial interest;
- ~~(44)~~~~(45)~~ "Universal collection" means a municipal solid waste collection system which is established by ordinance and approved by the cabinet and requires access for each household or solid waste generator in a county. A commercial or industrial entity which transports or contracts for the transport of the municipal solid waste it generates or which operates a solid waste management facility for its exclusive use may be excluded from participation;
- ~~(45)~~~~(46)~~ "Governing body" means a county, a waste management district, an entity created pursuant to the Interlocal Cooperation Act, a taxing district created pursuant to the provisions of KRS 65.180 to 65.192, a special district created pursuant to the provisions of KRS 65.160 to 65.176, or counties acting under contract pursuant to KRS 109.082;
- ~~(46)~~~~(47)~~ "Convenience center" means a facility that is manned during operating hours for the collection and subsequent transportation of municipal solid wastes;
- ~~(47)~~~~(48)~~ "Transfer facility" means 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;
- ~~(48)~~~~(49)~~ "Collection box" means an unmanned receptacle utilized to collect municipal solid waste;
- ~~(49)~~~~(50)~~ "Newsprint" means that class or kind of paper chiefly used for printing newspapers and weighing more than twenty-four and one-half (24 1/2) pounds, but less than thirty-five (35) pounds for five hundred (500) sheets of paper two (2) feet by three (3) feet in size, on rolls that are not less than thirteen (13) inches wide and twenty-eight (28) inches in diameter and having a brightness of less than sixty (60);
- ~~(50)~~~~(51)~~ "Postconsumer waste paper" means discarded paper after it has served its intended use by a publisher;
- ~~(51)~~~~(52)~~ "Publisher" means a person engaged in the business of publishing newspapers, advertisement flyers, telephone books, and other printed material;
- ~~(52)~~~~(53)~~ "Recycled content" means the proportion of fiber in newsprint that is derived from postconsumer waste paper;
- ~~(53)~~~~(54)~~ "Tire-derived fuel" or "TDF" means a product made from waste tires to the exact specifications of a system designed to accept tire-derived fuel as a primary or supplemental fuel source, that have been reduced to particle sizes not greater than two (2) inches by two (2) inches and that is destined for transportation from the waste tire processor for use as a fuel. "Tire-derived fuel" shall not mean refuse-derived fuel; and

~~(54)(55)~~ "Industrial energy facility" means a facility that produces transportation fuels, synthetic natural gas, chemicals, or electricity through a gasification process using coal, coal waste, or biomass resources, and costing in excess of seven hundred fifty million dollars (\$750,000,000) at the time of construction.

➔Section 20. KRS 224.70-120 is amended to read as follows:

- (1) As used in this section, "cabinet" shall mean the Energy and Environment Cabinet.
- (2) An applicant for a permit to discharge pollutants into waters of the Commonwealth shall be subject to a ~~permit filing~~ fee by the cabinet ~~in the amount of twenty percent (20%) of the discharge permit fee~~.
- (3) ~~[An applicant for a permit to discharge pollutants into waters of the Commonwealth shall be subject to a discharge permit fee by the cabinet upon receiving the cabinet's determination that the permit will be issued and]~~The *permit* fee shall be equal to the cost of review but shall not exceed the following amounts:
 - (a) Major industry: three thousand two hundred dollars (\$3,200);
 - (b) Minor industry: two thousand one hundred dollars (\$2,100);
 - (c) Nonprocess industry: one thousand dollars (\$1,000);
 - (d) Large, non-publicly-owned treatment works: one thousand seven hundred dollars (\$1,700);
 - (e) Intermediate, non-publicly-owned treatment works: one thousand five hundred dollars (\$1,500);
 - (f) Small, non-publicly-owned treatment works: one thousand dollars (\$1,000);
 - (g) Agriculture: one thousand two hundred dollars (\$1,200); and
 - (h) Surface mining operation: one thousand two hundred dollars (\$1,200).
- (4) The cabinet may impose the maximum *permit* fee if a discharge falls into multiple categories.

➔Section 21. KRS 189.450 is amended to read as follows:

- (1) No person shall stop a vehicle, leave it standing, or cause it to stop or to be left standing upon any portion of the roadway; provided, however, that this section shall not be construed to prevent parking in front of a private residence off the roadway or street in a city or suburban area where such parking is otherwise permitted, as long as the vehicle so parked does not impede the flow of traffic. This subsection shall not apply to:
 - (a) A vehicle that has been disabled on the right-of-way of such a highway in such a manner and to such extent that it is impossible to avoid the occupation of the shoulder of a state-maintained highway or impracticable to remove it from the shoulder of the highway until repairs have been made or sufficient help obtained for its removal. In no event shall a disabled vehicle remain on the shoulder of a state-maintained highway for twenty-four (24) hours or more;
 - (b) Motor vehicles when required to stop in obedience to the provisions of any section of the Kentucky Revised Statutes or any traffic ordinance, regulation, or sign or the command of any peace officer;
 - (c) Vehicles operating as common carriers of passengers for hire and school buses taking passengers on such vehicle or discharging passengers therefrom; provided, that no such vehicle shall stop for such purposes at a place on the highway which does not afford reasonable visibility to approaching motor vehicles from both directions;
 - (d) Vehicles which are stopped for a period of not more than fifteen (15) minutes at a time for the purpose of collecting and transporting solid waste as defined in KRS 224.1-010(30)~~(31)~~(a), and which are operated by a:
 1. Collection service registered in accordance with KRS 224.43-315; or
 2. Person or organization actively participating in the Adopt-a-Highway Program; or
 - (e) Any vehicle required to stop by reason of an obstruction to its progress.
- (2) When any police officer finds a vehicle standing upon such a highway in violation of this section, he may move or cause to be moved the vehicle or require the operator or other person in charge of the vehicle to move it. The police officer may cause the vehicle to be removed by ordering any person engaged in the business of storing or towing motor vehicles to remove the vehicle to a site chosen by such person. Ownership of the vehicle shall be determined by the police officer's enforcement agency through the vehicle's license plates,

serial number, or other means of determining ownership. As soon as practicable, the police officer's enforcement agency shall notify the owner by mail that the vehicle was illegally upon public property; the name and address of the storage facility where the vehicle is located; that removal of the vehicle from the storage facility will involve payment of towing and storage charges; and that the vehicle may be sold pursuant to the provisions of KRS 376.275 if not claimed within sixty (60) days. No notification shall be required if ownership cannot be determined. In the event of a sale pursuant to KRS 376.275, the state shall receive any proceeds after the satisfaction of all liens placed on the vehicle.

- (3) No vehicle shall be parked, stopped, or allowed to stand on the shoulders of any toll road, interstate highway, or other fully controlled access highway, including ramps thereto, nor shall any vehicle registered at a gross weight of over forty-four thousand (44,000) pounds be parked, stopped, or allowed to stand on the shoulders of any state-maintained highway, except that, in the case of emergency or in response to a peace officer's signal, vehicles shall be permitted to stop on the shoulders to the right of the traveled way with all wheels and projecting parts of the vehicles, including the load, completely clear of the traveled way. Parking of any vehicle which is disabled on the shoulders of a toll road, interstate highway, other fully controlled access highway, including ramps thereto, or any state-maintained highway not mentioned in this section for twenty-four (24) hours continuously is prohibited and vehicles violating this provision may be towed away at the cost of the owner.
- (4) When any police officer finds a vehicle unattended upon any bridge or causeway or in a tunnel where the vehicle constitutes an obstruction to traffic, the officer may provide for the removal of the vehicle to the nearest garage or other place of safety as provided in subsection (2) of this section.
- (5) No person shall stop or park a vehicle except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control device, in the following places:
 - (a) On a sidewalk;
 - (b) In front of sidewalk ramps provided for persons with disabilities;
 - (c) In front of a public or private driveway;
 - (d) Within an intersection or on a crosswalk;
 - (e) At any place where official signs prohibit stopping or parking;
 - (f) Within thirty (30) feet upon the approach to any flashing beacon, stop sign, or traffic control signal located at the side of a roadway;
 - (g) On any controlled access highway;
 - (h) Within a highway tunnel;
 - (i) Within fifteen (15) feet of a fire hydrant; or
 - (j) In an area between the roadways of a divided highway.
- (6) No person shall move a vehicle not lawfully under his control into any such prohibited area.
- (7) The restrictions in subsection (5)(e) of this section shall not apply to sheriffs and their deputies or police officers when operating properly identified vehicles during performance of their official duties.

➔Section 22. KRS 224.40-315 is amended to read as follows:

- (1) 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 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 submitted under KRS 224.43-345(1)(a) to (d) and (l) until January 1, 1993, and the entire plan after January 1, 1993. The governing body for the area shall, within sixty (60) days of receipt of a written request, make the determination after public notice and opportunity for public comment and public hearing. For applications with a notice of intent filed prior to February 26, 1991, the cabinet shall continue to process the application but no permit shall be approved until the governing body for the solid waste management area in which the facility is or will be located has made a determination in accordance with this section.
- (2) No permit to construct or expand a municipal solid waste disposal facility shall be approved unless the applicant affirmatively demonstrates and the cabinet makes a written finding in the preliminary determination

made pursuant to KRS 224.40-310(2) that the application conforms to and is consistent with all of the following:

- (a) The capacity needs identified in the area solid waste management plan;
 - (b) Other elements of the area solid waste management plan, for permit applications filed after approval of those elements;
 - (c) The statewide solid waste reduction and management plan, for permit applications filed after completion of the plan; and
 - (d) Applicable zoning regulations adopted pursuant to KRS Chapter 100.
- (3) If the cabinet approves a permit to construct or expand a municipal solid waste management facility after the governing body for the area has determined the application to be inconsistent with the area solid waste management plan, as part of the written finding the cabinet shall state in detail the reasons why it did not accept the determination of the governing body for the area.
- (4) For the purposes of this section, the term municipal solid waste disposal facility includes, in addition to those facilities defined in KRS 224.1-010~~(14)(15)~~, any residual or contained landfill or incinerator disposing of industrial solid waste for a fee, but does not include a waste site or facility which is operated exclusively by a solid waste generator on property owned by the solid waste generator which accepts only industrial solid waste from the solid waste generator or industrial solid waste generated at another facility owned and operated by the generator or wholly-owned subsidiary.

➔Section 23. KRS 224.50-760 is amended to read as follows:

- (1) (a) For purposes of this section and KRS 224.46-580(7), special wastes are those wastes of high volume and low hazard which include but are not limited to mining wastes, utility wastes (fly ash, bottom ash, scrubber sludge), wastes from coal gasification facilities (vitrified coarse solid residues, prilled or blocked sulfur) approved by the cabinet based on submittal of appropriate testing demonstrating that the wastes are of low hazard, sludge from water treatment facilities and wastewater treatment facilities, cement kiln dust, gas and oil drilling muds, and oil production brines. Other wastes may be designated special wastes by the cabinet;
- (b) Disposal sites or facilities for special wastes shall be exempt from the provisions of KRS 224.46-520 and the provisions of KRS 224.43-810 ~~and~~ 224.43-815~~, and KRS 224.46-820 to 224.46-870~~ but may be regulated by the cabinet consistent with the Resource Conservation and Recovery Act of 1976, as amended (Pub. L. 94-580), and regulations issued pursuant thereto, unless the special waste received is listed or meets the criteria of a hazardous waste in regulations pursuant to KRS 224.46-510(3). If the special waste is a hazardous waste as specified in regulations pursuant to KRS 224.46-510(3), the site or facility shall be required by the cabinet to comply with the provisions of KRS 224.46-520 but shall not be subject to the requirements of KRS 224.40-310(6);
- (c) Generators of special wastes shall register with the cabinet and be subject to the provisions of KRS 224.46-510, except for generators of coal mining wastes which shall be regulated pursuant to the provisions of KRS Chapter 350;
- (d) The cabinet shall, when promulgating regulations affecting special waste, recognize special waste as a separate and distinct indivisible category and shall recognize the distinct differences between the category of special wastes and other hazardous wastes and solid wastes as defined in KRS 224.1-010~~(30)(31)~~(a) and 109.012(9) due to the fact that special wastes have large volume but low hazardousness. The cabinet's regulations for the generation, transport, recordkeeping, reporting, treatment, storage, and disposal shall reflect those distinct differences. The cabinet's regulations shall recognize and incorporate, where appropriate, and if consistent with the policies of KRS 224.46-510 to 224.46-570, any deadline extensions, studies, and specialized requirements for specific kinds of special wastes that are or may be undertaken at the federal or other levels of government; and
- (e) It is the intent of the General Assembly that the processing of sludge from water treatment facilities and wastewater treatment facilities by composting shall be considered an industrial process. The cabinet shall, when promulgating administrative regulations affecting sludge from water treatment facilities and wastewater treatment facilities, consider the treatment of this sludge by composting as an industrial process. The provisions of this paragraph and subsection (3) of this section shall not apply to a city, county, urban-county government, charter county government, or special district as defined in KRS

Chapter 65, or to a public or private college or university that processes its own water treatment or wastewater treatment sludge by composting on property owned or leased by the city, county, urban-county government, charter county government, special district, or public or private college or university.

- (2) Generators of waste oil shall be exempt from the provisions of KRS 224.46-510 and 224.46-520 so long as waste oil is not specified as a hazardous waste in regulations pursuant to KRS 224.46-510(3) but may be regulated by the cabinet consistent with the Resource Conservation and Recovery Act of 1976, as amended (Pub. L. 94-580), and regulations issued pursuant thereto.
- (3) A permit application to establish, operate, or modify a composting site or composting facility for the processing of water treatment sludge or wastewater treatment sludge, shall require immediately the general public notice provided for in KRS 224.40-310(4) and (5). If a hearing is requested, no permit to establish, operate, or modify a composting site or facility shall be issued prior to the public hearing. The hearing shall be held within the county where the composting site or facility is located or proposed. Composting of this sludge shall be considered an industrial process.

➔Section 24. KRS 224.50-856 is amended to read as follows:

- (1) No person shall engage in disposal of waste tires in Kentucky except by transfer to a permitted solid waste disposal facility and except as follows:
 - (a)
 1. If transferred to a contained landfill, the waste tires shall be processed to prevent the entrapment of air or water;
 2. If transferred to a residual landfill, the waste tires shall be rendered suitable for disposal in a landfill and the landfill shall accept only waste tires for disposal; or
 3. If transferred to an incinerator or to any facility for use as a fuel, the incinerator or other facility shall be permitted in accordance with KRS 224.20-110 and 224.40-310 to allow the burning of waste tires and shall have received a local determination related to the waste tires in accordance with KRS 224.40-315(1); and
 - (b) Facilities proposing to use tire-derived fuel, as that term is defined in KRS 224.1-010(53)~~[(54)]~~, as a fuel or for other energy recovery, shall not be required to receive a local determination related to the tire-derived fuel use under KRS 224.40-315(1). The Division of Air Quality shall provide for public notice and an opportunity for comment on any application seeking approval for use of tire-derived fuel.
- (2) No person shall accumulate more than twenty-five (25) waste tires in Kentucky at a time for processing, by baling, chopping, recycling, shredding, or other means of changing their shape, size, or chemical content without meeting the requirements of the waste tire program. For processing which had been approved by the cabinet before July 15, 1998, the person who had received the approval shall register within forty-five (45) days of July 15, 1998.
- (3) No person shall transport more than fifty (50) waste tires in Kentucky at a time, either in one (1) vehicle or more than one (1) vehicle managed by or operated under contract with that person, without meeting the requirements of the waste tire program, unless transported in accordance with subsection (5) of this section.
- (4) No person shall accumulate more than one hundred (100) waste tires in Kentucky at a time without meeting the requirements of the waste tire program, unless exempted by KRS 224.50-854 or accumulated in accordance with subsection (5) or (6) of this section. For accumulations of more than one hundred (100) tires not accumulated in accordance with subsection (5) or (6) of this section and existing on July 15, 1998, the person who has accumulated the tires shall register within forty-five (45) days of July 15, 1998.
- (5) A person making retail sales of new motor vehicle tires in Kentucky may accumulate up to one thousand (1,000) waste tires at the place where retail sales are made without registering as an accumulator as required by KRS 224.50-858, if the waste tires are stored in accordance with the requirements of KRS 224.50-860(3), (5), (6), (7), and (8), and stored on-site in a building, in an adjacent covered area, or closed container where public access is prohibited after business hours. The retailer may transport the waste tires it accumulates at the place where retail sales are made without registering as a transporter as required by KRS 224.50-858 if the waste tires will remain in the retailer's possession until they reach their destination.
- (6) An automotive recycling dealer in Kentucky who is licensed by the Transportation Cabinet pursuant to KRS 190.010 to 190.080 may accumulate up to one thousand (1,000) waste tires at the place where automotive recycling is done without registering as an accumulator as required by KRS 224.50-858 if the waste tires are

stored in accordance with KRS 224.50-860(2) to (11) and stored on-site in a building, in an adjacent covered area, or closed container where public access is prohibited after business hours.

➔Section 25. KRS 224.73-110 is amended to read as follows:

- (1) The Kentucky Board of Certification of Wastewater System Operators is established. The board shall recommend qualified applicants to the cabinet for certification and perform ~~such~~ other acts as may be necessary to carry out the purposes of this section. Members of the board shall be appointed by the Governor. The board shall consist of eight (8) members who may have professional backgrounds as follows: one (1) employee of a municipality who holds the position of either city manager, city engineer, director of public works, or the equivalent thereof; one (1) member who is a faculty member of a college, university, or professional school whose major field is related to wastewater treatment; one (1) nonvoting ex officio member representing the cabinet; and five (5) members currently employed as operators holding valid certificates where one (1) of these five (5) shall be an operator of an industrial wastewater system. Board members shall serve for a four (4) year term, except for the first board to which two (2) of the operators will be appointed for four (4) years and three (3) for two (2) years. The first college faculty member will be appointed for two (2) years and the remaining board members will be appointed for four (4) years. The cabinet's representative shall serve as executive secretary and treasurer and be responsible for maintaining records. The members of the board shall serve without compensation but may be reimbursed for all actual and necessary expenses incurred while discharging their official duties. At least four (4) existing members of the board shall constitute a quorum.
- (2) No person shall have primary responsibility for the operation of any sewage system or portion thereof whether publicly or privately owned unless:
 - (a) *The person~~he~~* has passed an examination prescribed by the Energy and Environment Cabinet and board which shall determine *the person's~~his~~* skill and competency for *the~~such~~* operation and has been issued a certificate to that effect by the cabinet; *or*
 - (b) *The person is operating a sewage system located at the residence where the person lives and the sewage system serves only one (1) residence.*
- (3) No person shall authorize or allow any person who does not hold a certificate issued pursuant to subsection (2) of this section to have primary responsibility for the operation of any sewage system or portion thereof.
- (4) The cabinet, with the advice of the board of certification, may classify all sewage systems and portions thereof in the manner provided by the rules and regulations of the cabinet with regard to size, type, physical conditions affecting such systems or portions thereof, and the skill, knowledge and experience required for the operation of the system or portion thereof and restrict the application of any certificate issued pursuant to subsection (2) of this section to the operation of a sewage system or portion thereof of a specific class.
- (5) Any person who has primary responsibility for the operation of a sewage system for a school shall be entitled to a limited certificate of competency for his particular system, provided he has demonstrated that he has the knowledge and experience required to operate properly the particular sewage system for which he is responsible. A limited certificate of competency so issued is not transferable to any other sewage system, nor is the period of operation under such a limited certificate eligible for consideration toward the experience requirements for a certificate of competency as provided in subsection (2) of this section.
- (6) All applicants for the examination and certification for the operation of any sewage system or portion thereof, whether publicly or privately owned, shall pay a reasonable schedule of fees and charges fixed by regulation. The fees required under this section shall be payable to the cabinet.
- (7) Operators shall have accumulated a minimum number of hours of appropriate board approved training set by regulation for certificate renewal. Such training shall include, but may not be limited to, correspondence courses, short courses, trade association meetings, and on-the-job training. Training hours accumulated in any given year in excess of the minimum requirement necessary for renewal may be carried forward for a period not to exceed two (2) years.
- (8) The board may waive any or all of the requirements of subsection (7) of this section for all or portions of an established class of operators.

➔Section 26. KRS 224.80-100 is amended to read as follows:

As used in this subchapter:

- (1) "Activity and use limitations" means restrictions or obligations created under KRS 224.80-100 to 224.80-210.
- (2) "Applicant" means a person applying to the cabinet for approval of an environmental covenant.
- (3) "Cabinet" means the Energy and Environment Cabinet.
- (4) "Common interest community" means a condominium, cooperative, or other real property owned by a person as part of a parcel of real property for which there is an obligation to pay property taxes, insurance premiums, or maintenance, or to make improvements to the real property as described and established in a recorded environmental covenant.
- (5) "Environmental covenant" means a servitude arising under an environmental response project that imposes activity and use limitations.
- (6) "Environmental response project" means a plan or work performed for the environmental remediation of real property conducted:
 - (a) Under a federal or state program governing environmental remediation of real property including programs established pursuant to KRS 224.1-400, 224.1-405, 224.46-530, and 224.1-450 to 224.1-465;
 - (b) Incident to closure of a solid or hazardous waste management unit, if the closure is conducted with approval of the cabinet; or
 - (c) Under a Commonwealth voluntary cleanup program authorized under KRS 224.1-510 to 224.1-532.
- (7) "Holder" means the grantee of an environmental covenant.
- (8) "Indexing" means the practice or method kept by a county clerk's office to record legal property transactions.
- (9) "Interest" means all or part of a legal equitable claim to a right in real property which shall include both possessory and nonpossessory interests.
- (10) "Owner" means a person that owns a fee simple interest or any other interest in real property that is subject to an environmental covenant.
- (11) "Person" shall have the meaning specified in KRS 224.1-010~~(16)~~~~(17)~~.
- (12) "Public notice" means the publication of required information in a daily or weekly newspaper of major circulation located in the county or counties where the property subject to the proposed environmental covenant is located. If there is no daily or weekly newspaper of major circulation in the county or counties where the property is located, public notice shall mean publication of required information in a daily or weekly newspaper of major circulation in a county adjacent to the county or counties where the property is located.
- (13) "Subordination agreement" means an agreement affecting priority of interests in a real property that is subject to an environmental covenant.
- (14) "Servitude" means a right, burden, or restriction on the use of real property that passes from the current owner or tenant to any owners or tenants in succession.

➔Section 27. KRS 224A.011 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) "Administrative fee" means a fee assessed and collected by the authority from borrowers under assistance agreements, to be used for operational expenses of the authority;
- (2) "Applicable interest rate" means the rate of interest which shall be used as part of the repayment criteria for an assistance agreement between a governmental agency and the authority, and shall be determined by the authority pertinent to the source of funds from which the assistance agreement is funded;
- (3) "Assistance agreement" means the agreement to be made and entered into by and between a governmental agency and the authority, as authorized by this chapter, providing for a lease, loan, services, or grant to the governmental agency or for the purchase of obligations issued by the governmental agency, and for the repayment thereof to the authority by the governmental agency;
- (4) "Authority" means the Kentucky Infrastructure Authority, which is created by this chapter;
- (5) "Authority revenues" means the totality of all:
 - (a) Service charges;

- (b) Utility tax receipts, to the extent not otherwise committed and budgeted by the authority during any fiscal period of the authority;
 - (c) Any gifts, grants, or loans received, to the extent not otherwise required to be applied;
 - (d) Any and all appropriations made to the authority by the General Assembly of the Commonwealth of Kentucky, to the extent not otherwise required to be applied;
 - (e) All moneys received in repayment of and for interest on any loans made by the authority to a governmental agency, except as provided in KRS 224A.111, 224A.1115, and 224A.112, or as principal of and interest on any obligations issued by a governmental agency and purchased by the authority, or as receipts under any assistance agreement;
 - (f) The proceeds of bonds or long-term debt obligations of governmental agencies pledged to the payment of bond anticipation notes issued by the authority on behalf of the said governmental agency to provide interim construction financing; and
 - (g) Payments under agreements with any agencies of the state and federal government;
- (6) "Borrower or borrowing entity" means any agency of the state or its political subdivisions, any city, or any special district created under the laws of the state acting individually or jointly under interagency or interlocal cooperative agreements to enter into assistance agreements with the authority;
- (7) "Community flood damage abatement project" means any structural or nonstructural study, plan, design, construction, development, improvement, or other activity to provide for flood control;
- (8) "Construction" means and includes but is not limited to:
- (a) Preliminary planning to determine the economic and engineering feasibility of infrastructure projects, the engineering, architectural, legal, fiscal, and economic investigations, and studies necessary thereto, and surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary to the construction of infrastructure or solid waste projects;
 - (b) The erection, building, acquisition, alteration, remodeling, improvement, or extension of infrastructure or solid waste projects; and
 - (c) The inspection and supervision of the construction of infrastructure or solid waste projects and all costs incidental to the acquisition and financing of same. This term shall also relate to and mean any other physical devices or appurtenances in connection with, or reasonably attendant to, infrastructure or solid waste projects;
- (9) "Dams" means any artificial barrier, including appurtenant works, which does or can impound or divert water, and which either:
- (a) Is or will be twenty-five (25) feet or more in height from the natural bed of the stream or watercourse at the downstream toe of the barrier, as determined by the Energy and Environment Cabinet; or
 - (b) Has or will have an impounding capacity at maximum water storage elevation of fifty (50) acre feet or more;
- (10) "Distribution facilities" means all or any part of any facilities, devices, and systems used and useful in obtaining, pumping, storing, treating, and distributing water for agricultural, industrial, commercial, recreational, public, and domestic use;
- (11) "Energy and Environment Cabinet" means the Kentucky Energy and Environment Cabinet, or its successor, said term being meant to relate specifically to the state agency which is designated as the water pollution agency for the Commonwealth of Kentucky, for purposes of the federal act;
- (12) "Federal act" means the Federal Clean Water Act (33 U.S.C. secs. 1251 et seq.) as said federal act may be amended from time to time in the future, or any other enactment of the United States Congress providing funds that may assist in carrying out the purposes of the authority;
- (13) "Federally assisted wastewater revolving fund" means that fund which will receive federal and state funds or the proceeds from the sale of revenue bonds of the authority for the purpose of providing loans to finance construction of publicly owned treatment works as defined in Section 212 of the federal act and for the implementation of a management program established under Section 319 of the federal act and for the development and implementation of a conservation and management plan under Section 320 of the federal act;

- (14) "Governmental agency" means any incorporated city or municipal corporation, or other agency, or unit of government within or a department or a cabinet of the Commonwealth of Kentucky, now having or hereafter granted, the authority and power to finance, acquire, construct, or operate infrastructure or solid waste projects. This definition shall specifically apply but not by way of limitation to incorporated cities; counties, including any counties containing a metropolitan sewer district; sanitation districts; water districts; water associations if these associations are permitted to issue interest-bearing obligations which interest would be excludable from gross income under Section 103 of the Internal Revenue Code of 1986 as amended; sewer construction districts; metropolitan sewer districts; sanitation taxing districts; a regional wastewater commission established under KRS 65.8901 to 65.8923; and any other agencies, commissions, districts, or authorities (either acting alone, or in combination with one another in accordance with any regional or area compact, or intergovernmental cooperative agreements), now or hereafter established in accordance with the laws of the Commonwealth of Kentucky having and possessing the described powers described in this subsection;
- (15) "Industrial waste" means any liquid, gaseous, or solid waste substances resulting from any process of industry, manufacture, trade, or business, or from the mining or taking, development, processing, or recovery of any natural resources, including heat and radioactivity, together with any sewage as is present therein, which pollutes the waters of the state, and specifically, but not by way of limitation, means heat or thermal differentials created in the waters of the state by any industrial processing, generating, or manufacturing processes;
- (16) "Infrastructure project" means any construction or acquisition of treatment works, facilities related to the collection, transportation, and treatment of wastewater as defined in KRS 65.8903, distribution facilities, or water resources projects instituted by a governmental agency or an investor-owned water utility which is approved by the authority and, if required, by the Energy and Environment Cabinet, Public Service Commission, or other agency; solid waste projects; dams; storm water control and treatment systems; gas or electric utility; broadband deployment project; or any other public utility or public service project which the authority finds would assist in carrying out the purposes set out in KRS 224A.300;
- (17) "Infrastructure revolving fund" means that fund which will receive state funds, the proceeds from the sale of revenue bonds of the authority or other moneys earmarked for that fund for the purpose of providing loans or grants to finance construction or acquisition of infrastructure projects as defined in this section;
- (18) "Loan or grant" means moneys to be made available to governmental agencies by the authority for the purpose of defraying all or any part of the total costs incidental to construction or acquisition of any infrastructure project;
- (19) "Market interest rate" means the interest rate determined by the authority under existing market conditions at the time the authority shall provide financial assistance to a governmental agency;
- (20) "Obligation of a governmental agency" means a revenue bond, bond anticipation note, revenue anticipation note, lease, or other obligation issued by a governmental agency under KRS 58.010 et seq. or other applicable statutes;
- (21) "Person" means any individual, firm, partnership, association, corporation, or governmental agency;
- (22) "Pollution" means the placing of any noxious or deleterious substances ("pollutants"), including sewage and industrial wastes, in any waters of the state or affecting the properties of any waters of the state in a manner which renders the waters harmful or inimical to the public health or to animal or aquatic life, or to the use, present or future, of these waters for domestic water supply, industrial or agricultural purposes, or recreational purposes;
- (23) "Prioritization schedules" means the list of wastewater treatment works, distribution facilities and water resources projects which the Energy and Environment Cabinet has evaluated and determined to be of priority for receiving financial assistance from the federally assisted wastewater revolving fund and the federally assisted drinking water revolving fund, or the list of infrastructure projects which the authority has evaluated and determined to be of priority for receiving financial aid from the infrastructure revolving fund. The evaluation by the authority of infrastructure projects for water systems shall be undertaken with input from the appropriate area development district. The evaluation by the authority of infrastructure for broadband deployment projects shall be undertaken with consideration given to input from area development districts, telecommunications businesses, information services, technology industries, governmental entities, and Kentucky-based nonprofit organizations, including ConnectKentucky;
- (24) "Solid waste project" means construction, renovation, or acquisition of a solid waste facility which shall be instituted and owned by a governmental agency;

- (25) "Recovered material" means those materials which have known current use, reuse, or recycling potential, which can be feasibly used, reused, or recycled, and which have been diverted or removed from the solid waste stream for sale, use, reuse, or recycling, whether or not requiring subsequent separation and processing but does not include materials diverted or removed for purposes of energy recovery or combustion except refuse-derived fuel (RDF), which shall be credited as a recovered material in an amount equal to that percentage of the municipal solid waste received on a daily basis at the processing facility and processed into RDF; but not to exceed fifteen percent (15%) of the total amount of the municipal solid waste received at the processing facility on a daily basis;
- (26) "Recovered material processing facility" means a facility engaged solely in the storage, processing, and resale or reuse of recovered material but does not mean a solid waste facility if solid waste generated by a recovered material processing facility is managed in accordance with KRS Chapter 224 and administrative regulations adopted by the cabinet;
- (27) "Revenue bonds" means special obligation bonds issued by the authority as provided by the provisions of this chapter, which are not direct or general obligations of the state, and which are payable only from a pledge of, and lien upon, authority revenues as provided in the resolution authorizing the issuance of the bonds, and shall include revenue bond anticipation notes;
- (28) "Service charge" means any monthly, quarterly, semiannual, or annual charge to be imposed by a governmental agency, or by the authority, for any infrastructure project financed by the authority, which service charge arises by reason of the existence of, and requirements of, any assistance agreement;
- (29) "Sewage" means any of the waste products or excrements, or other discharges from the bodies of human beings or animals, which pollute the waters of the state;
- (30) "Solid waste" means "solid waste" as defined by KRS 224.1-010~~(30)~~~~(31)~~(a);
- (31) "Solid waste facility" means any facility for collection, handling, storage, transportation, transfer, processing, treatment, or disposal of solid waste, whether the facility is associated with facilities generating the waste or otherwise, but does not include a container located on property where the 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;
- (32) "Solid waste revolving fund" means that fund which shall receive state funds, the proceeds from the sale of revenue bonds of the authority, or other moneys earmarked for the purpose of providing loans or grants to finance solid waste projects defined in this section;
- (33) "State" means the Commonwealth of Kentucky;
- (34) "System" means the system owned and operated by a governmental agency with respect to solid waste projects, treatment works, or infrastructure projects financed as provided by the assistance agreement between the governmental agency and the authority;
- (35) "Treatment works" or "wastewater treatment works" means all or any part of any facilities, devices, and systems used and useful in the storage, treatment, recycling, and reclamation of wastewater or the abatement of pollution, including facilities for the treatment, neutralization, disposal of, stabilization, collecting, segregating, or holding of wastewater, including without limiting the generality of the foregoing, intercepting sewers, outfall sewers, pumping power stations, and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof, and any wastewater treatment works, including site acquisition of the land that will be an integral part of the wastewater treatment process, or is used for ultimate disposal of residues resulting from wastewater treatment, together with any other facilities which are deemed to be treatment works in accordance with the federal act;
- (36) "Variable rate revenue bonds" means revenue bonds the rate of interest on which fluctuates either automatically by reference to a predetermined formula or index or in accordance with the standards set forth in KRS 224A.120;
- (37) "Wastewater" means any water or liquid substance containing sewage, industrial waste, or other pollutants or contaminants derived from the prior use of these waters;
- (38) "Water resources" means all waters of the state occurring on the surface, in natural or artificial channels, lakes, reservoirs, or impoundments, and in subsurface aquifers, which are available, or which may be made available to agricultural, industrial, commercial, recreational, public, and domestic users;

- (39) "Water resources project" means any structural or nonstructural study, plan, design, construction, development, improvement, or any other activity including programs for management, intended to conserve and develop the water resources of the state and shall include all aspects of water supply, facilities to collect, transport, and treat wastewater as defined in KRS 65.8903, flood damage abatement, navigation, water-related recreation, and land conservation facilities and measures;
- (40) "Waters of the state" means all streams, lakes, watercourses, waterways, ponds, marshes, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, which are situated wholly or partly within, or border upon, this state, or are within its jurisdiction, except those private waters which do not combine or effect a junction with natural, surface, or underground waters;
- (41) "Utility tax" means the tax which may be imposed by the authority on every purchase of water or sewer service in the Commonwealth of Kentucky;
- (42) "Broadband deployment project" means the construction, provision, development, operation, maintenance, leasing, or improvement of broadband infrastructure, broadband services, or technologies that constitute a part of, or are related to, broadband infrastructure or broadband services, to provide for broadband service in unserved areas of the Commonwealth; and
- (43) "Unserved area" means any place where broadband service is not available.

➔Section 28. KRS 349.010 is amended to read as follows:

As used in this chapter:

- (1) "Abandoned" when used in connection with a well or hole means a well or hole which has never been used, or which, in the opinion of the department, will no longer be used for the production of coalbed methane or the injection or disposal of fluid therein;
- (2) "Coal interest holder" means every record coal owner, record coal lessee, mine licensee as defined in KRS 352.010(1)(r)~~(s)}~~ and mine permittee as defined in KRS 350.010(21) whose coalbed is penetrated, or proposed to be penetrated, by a coalbed methane well;
- (3) "Coalbed" or "coal seam" means a seam of coal, whether workable or unworkable;
- (4) "Coalbed methane" means gas produced from a reservoir found in a coalbed, a mined-out area, or gob;
- (5) "Coalbed methane well" means any well drilled, deepened, converted, or reopened for the purpose of capturing coalbed methane for sale or use. Any well initially used for a coal mining-related purpose, such as a vent well, but which is subsequently used for the purpose of recovering coalbed methane for sale or use, shall then be deemed to be a coalbed methane well and shall comply with the provisions of this chapter at the time that the well is converted or used for the purpose of recovering coalbed methane for sale or use;
- (6) "Commissioner" means the commissioner of the Department for Natural Resources;
- (7) "Correlative rights" means the reasonable opportunity of each person entitled to recover, without waste, the coalbed methane in and under his or her tract or tracts, or the equivalent thereof;
- (8) "Department" means the Department for Natural Resources;
- (9) "Director" means the director of the Division of Oil and Gas as established in KRS 353.530;
- (10) "Drilling unit" means the maximum area in a pool which may be drained efficiently by one (1) well so as to produce the reasonable maximum recoverable coalbed methane in the area. Where the department has provided rules for the establishment of a drilling unit and an operator, proceeding within the framework of the rules so prescribed, has taken the action necessary to have a specified area established for production from a well, the area shall be a drilling unit;
- (11) "Division" means the Division of Mine Permits in the Department for Natural Resources;
- (12) "Field rules" means rules established by orders of the review board relating to the drilling, completion, production of, and specifications for coalbed methane wells in a particular geographic area as defined by an order;
- (13) "Gob" means the de-stressed zone associated with any full-seam extraction of coal that extends above and below the mined-out coalbed;

- (14) "Gob well" means a well drilled or a vent hole converted to a well pursuant to this chapter which produces or is capable of producing coalbed methane for sale or use, from a de-stressed zone associated with any full seam extraction of coal that extends above or below a mined-out coalbed;
- (15) "Horizontally drill" or "horizontal drilling" means the intentional act of drilling a borehole, shaft, or hole, which deviates from vertical for the purpose of penetrating a coal seam to produce coalbed methane;
- (16) "Mine licensee" means the mine licensee as defined in KRS 352.010(1)(r)~~(s)~~;
- (17) "Mine permittee" means the permittee as defined in KRS 350.010(21);
- (18) "Nonparticipating working interest owner" means a coalbed methane owner or lessee of a tract included in a drilling unit who elects to share in the operation of the coalbed methane well on a carried basis by agreeing to have his or her proportionate share of the costs allocable to his or her interest charged against his or her share of production from the coalbed methane well;
- (19) "Nonparticipating operator" means a nonparticipating working interest owner who is also the operator of the coalbed methane well;
- (20) "Operator" means any owner of the right to drill, develop, operate, and produce coalbed methane from a pool and to appropriate the coalbed methane produced therefrom, either for himself or herself, or for himself, herself, and others; in the event there is no coalbed methane lease in existence with respect to the tract in question, the owner of the coalbed methane rights therein shall be considered as an "operator" to the extent of seven-eighths (7/8) of the coalbed methane in that portion of the pool underlying the tract owned by that owner, and as a "royalty owner" as to one-eighth (1/8) interest in that coalbed methane;
- (21) "Other interested coalbed methane parties" means all working interest owners other than the operator, all royalty and overriding royalty interest owners or holders, and any other party who owns or holds a right or interest in a drilling unit, coalbed methane well site for which a drilling permit has been issued or is pending, and all associated equipment, facilities, infrastructure, and improvements;
- (22) "Participating working interest owner" means a coalbed methane owner or lessee who elects to bear a share of the risks and costs of drilling, completing, equipping, operating, plugging, and abandoning a coalbed methane well equal to the proportion which the acreage in the drilling unit he or she owns or holds under lease bears to the total acreage of the drilling unit;
- (23) "Participating operator" means a participating working interest owner who is also the operator of the coalbed methane well;
- (24) "Person" means any person, corporation, association, partnership, limited liability company, receiver, governmental agency subject to this chapter, trustee, so-called common law or statutory trust, guardian, executor, administrator, or fiduciary of any kind, federal agency, state agency, city, commission, political subdivision of the Commonwealth, or any interstate body;
- (25) "Plat" means a map, drawing, or print showing the location of a well;
- (26) "Review board" means the Coalbed Methane Well Review Board;
- (27) "Royalty owner" means any owner of coalbed methane in place, or coalbed methane rights, to the extent that the owner is not an operator as defined in subsection (20) of this section;
- (28) "Stimulate" means any action taken to increase the flow of coalbed methane, or the inherent productivity of a coalbed methane well, including but not limited to fracturing, shooting, acidizing, or waterflooding, but excluding cleaning out, bailing, or workover operations;
- (29) "Surface owner" means the person in whose name the surface of the land is assessed for purposes of taxes imposed according to the property valuation administrator;
- (30) "Unit" means any tract or tracts which the department has determined are overlaid by a pool or pools of coalbed methane and are not drilling units as defined in subsection (10) of this section;
- (31) "Unitization" means the act of combining separately owned tracts or separate interests therein into a unit constituting all or some portion of a coalbed that produces or is capable of producing coalbed methane and the joint operation of that unit;
- (32) "Unit operator" means the party designated in a pooling order to develop a unit by the drilling of one (1) or more coalbed methane wells;

- (33) "Vent hole" means a borehole, shaft driven, or hole dug, drilled, deepened, converted or reopened, which is used for the purpose of releasing or venting coalbed methane to the atmosphere and not for the purpose of capturing or producing coalbed methane for sale or use;
- (34) "Venting" means the act of releasing coalbed methane to the atmosphere;
- (35) "Well" means any borehole, shaft driven, or hole dug, drilled, deepened, converted or reopened for the purpose of capturing or producing coalbed methane for sale or use; and
- (36) "Workable coalbed" means:
- (a) Any coalbed twenty-four (24) inches or more in thickness;
 - (b) Any coalbed actually being operated commercially;
 - (c) Any coalbed that the department decides can be operated commercially, and the operation of which can reasonably be expected to commence within not more than ten (10) years; or
 - (d) Any coalbed that, from outcrop indication or other definite evidence, proves to the satisfaction of the department to be workable and, when operated, will require protection if wells are drilled through or into it.

➔Section 29. KRS 351.010 is amended to read as follows:

- (1) As used in this chapter, unless the context requires otherwise:
- (a) "Adulterated specimen" means a specimen containing a substance that is not a normal constituent or containing an endogenous substance at a concentration that is not a normal physiological concentration;
 - (b) "Approved" means that a device, apparatus, equipment, or machinery, or practice employed in the mining of coal has been approved by the commissioner of the Department for Natural Resources;
 - (c) "Assistant mine foreman" means a certified person designated to assist the mine foreman in the supervision of a portion or the whole of a mine or of the persons employed therein;
 - (d) ~~["Board" means the Mining Board created in KRS 351.105;~~
 - ~~(e)~~ "Commercial mine" means any coal mine from which coal is mined for sale, commercial use, or exchange. This term shall in no instance be construed to include a mine where coal is produced for own use;
 - ~~(e)~~~~(f)~~ "Commission" means the Mine Safety Review Commission created by KRS 351.1041;
 - ~~(f)~~~~(g)~~ "Commissioner" means commissioner of the Department for Natural Resources;
 - ~~(g)~~~~(h)~~ "Department" means the Department for Natural Resources;
 - ~~(h)~~~~(i)~~ "Drift" means an opening through strata or coal seams with opening grades sufficient to permit coal to be hauled therefrom or which is used for the purpose of ventilation, drainage, ingress, egress, and other purposes in connection with the mining of coal;
 - ~~(i)~~~~(j)~~ "Excavations and workings" means the excavated portions of a mine;
 - ~~(j)~~~~(k)~~ "Fire boss" (often referred to as mine examiner) means a person certified as a mine foreman or assistant mine foreman who is designated by management to examine a mine or part of a mine for explosive gas or other dangers before a shift crew enters;
 - ~~(k)~~~~(l)~~ "Gassy mine." All mines shall be classified as gassy or gaseous;
 - ~~(l)~~~~(m)~~ "Illicit substances" includes prescription drugs used illegally or in excess of therapeutic levels as well as illegal drugs;
 - ~~(m)~~~~(n)~~ "Intake air" means air that has not passed through the last working place of the split or by the unsealed entrances to abandoned workings and by analysis contains not less than nineteen and one-half percent (19.5%) oxygen, no dangerous quantities of flammable gas, and no harmful amounts of poisonous gas or dust;
 - ~~(n)~~~~(o)~~ "Licensee" means any owner, operator, lessee, corporation, partnership, or other person who procures a license from the department to operate a coal mine;

- (o)~~(p)~~ "Medical review officer" or "MRO" means a licensed physician with knowledge of substance abuse disorders, laboratory testing, chain of custody, collection procedures, and the ability to verify positive, confirmed test results. The MRO shall possess the necessary medical training to interpret and evaluate a positive test result in relation to the person's medical history or any other relevant biomedical information;
- (p)~~(q)~~ "Mine" means any open pit or any underground workings from which coal is produced for sale, exchange, or commercial use, and all shafts, slopes, drifts, or inclines leading thereto, and includes all buildings and equipment, above or below the surface of the ground, used in connection with the workings. Workings that are adjacent to each other and under the same management, but which are administered as distinct units, shall be considered a separate mine;
- (q)~~(r)~~ "Mine foreman" means a certified person whom the licensee or superintendent places in charge of the workings of the mine and of the persons employed therein;
- (r)~~(s)~~ "Mine manager" means a certified or noncertified person whom the licensee places in charge of a mine or mines and whose duties include but are not limited to operations at the mine or mines and supervision of personnel when qualified to do so;
- (s)~~(t)~~ "Open-pit mine" shall include open excavations and open-cut workings, including but not limited to auger operations and highwall mining systems for the extraction of coal;
- (t)~~(u)~~ "Operator" means the licensee, owner, lessee, or other person who operates or controls a coal mine;
- (u)~~(v)~~ "Permissible" refers to any equipment, device, or explosive that has been approved by the United States Bureau of Mines, the Mining Enforcement and Safety Administration, or the Mine Safety and Health Administration and that meets all requirements, restrictions, exceptions, limitations, and conditions attached to the classification by the approving agency;
- (v)~~(w)~~ "Preshift examination" means the examination of a mine or any portion thereof where miners are scheduled to work or travel, which shall be conducted not more than three (3) hours before any oncoming shift;
- (w)~~(x)~~ "Return air" means air that has passed through the last active working place on each split, or air that has passed through abandoned, inaccessible, or pillared workings;
- (x)~~(y)~~ "Serious physical injury" means an injury which has a reasonable potential to cause death;
- (y)~~(z)~~ "Shaft" means a vertical opening through the strata that is used in connection with the mining of coal, for the purpose of ventilation or drainage, or for hoisting men, coal, or materials;
- (z)~~(aa)~~ "Slope" means an inclined opening used for the same purpose as a shaft;
- (aa)~~(ab)~~ "Superintendent" means the person who, on behalf of the licensee, has immediate supervision of one (1) or more mines;
- (ab)~~(ac)~~ "Supervisory personnel" means a person certified under the provisions of this chapter to assist in the supervision of a portion or the whole of the mine or of the persons employed therein;
- (ac)~~(ad)~~ "Division" means the Division of Mine Safety;
- (ad)~~(ae)~~ "Director" means the director of the Division of Mine Safety;
- (ae)~~(af)~~ "Probation" means the status of a certification or license issued by the Division of Mine Safety that conditions the validity of the certification or license upon compliance with orders of the Mine Safety Review Commission; and
- (af)~~(ag)~~ "Final order of the commission" means an order which has not been appealed to the Franklin Circuit Court within thirty (30) days of entry, or an order affirming the commission's order that has been entered by any court within the Commonwealth and for which all appeals have been exhausted.

(2) Except as the context otherwise requires, this chapter applies only to commercial coal mines.

(3) The definitions in KRS 352.010 apply also to this chapter, unless the context requires otherwise.

➔Section 30. KRS 351.070 is amended to read as follows:

- (1) The commissioner shall have full authority over the department and shall superintend and direct the activities of the mine safety specialists and other personnel of the department. There is created within the Department for Natural Resources a Division of Mine Safety.
- (2) The secretary shall appoint a director to the Division of Mine Safety in accordance with KRS 224.10-020(2) and prescribe his or her powers and duties.
- (3) The commissioner may, whenever necessary, divide the coal fields of the state into as many inspection regions as necessary, so as to equalize as nearly as practicable the work of each mine safety specialist, and may assign to the specialists their respective regions.
- (4) The commissioner may, whenever he or she deems it necessary in the interest of efficient supervision of the mines, temporarily employ the services of additional mine safety specialists or change specialists from one (1) region to another.
- (5) The commissioner shall superintend and direct the inspection of mines and cause to be investigated the character and quality of air in mines whenever conditions indicate the necessity of doing so.
- (6) The commissioner shall collect statistics relating to coal mining in the state and make an annual report of the statistics.
- (7) The commissioner shall see that maps, plans, projections, and proposed developments of all underground coal mines are made and filed in his office.
- (8) The commissioner shall keep a properly indexed, permanent record of all inspections made by himself and the personnel of the department.
- (9) The commissioner shall exercise general supervision over the training of officials and workmen in safety and first aid and mine rescue methods, and may conduct demonstrations in safety whenever he deems it advisable.
- (10) The commissioner shall exercise general supervision over the dissemination of information among officials and employees concerning mine ventilation, mining methods, and mine accidents and their prevention, and shall assume full charge in the event of mine fire or explosion or other serious accident at any mine in the state.
- (11) The commissioner may assist in the resumption of operations of any mine or gather data for the development of any coal seams that would be of any benefit to the state or create new employment.
- (12) The commissioner may prescribe reasonable safety standards governing the use of explosives, and electrical and mechanical equipment in the operation of open-pit or surface mines.
- (13) The secretary of the Energy and Environment Cabinet shall have the power and authority to promulgate, amend, or rescind any administrative regulations he or she deems necessary and suitable for the proper administration of this chapter. Administrative regulations may be promulgated, amended, or rescinded by the secretary only after public hearing or an opportunity to be heard thereon of which proper notice by publication pursuant to KRS Chapter 424, has been given. Administrative regulations so promulgated shall carry the full force and effect of law.
- (14) The commissioner shall ascertain the cause or causes of any coal mining fatality and any accidents involving serious physical injury and, within sixty (60) days of completion of the investigation, shall report his or her findings and recommendations to the Governor, the Mine Safety Review Commission, ~~the Mining Board,~~ and the Legislative Research Commission. Accident interviews conducted by the division shall be closed proceedings. The recommendations may include without being limited to the need to promulgate or amend administrative regulations to prevent the recurrence of the conditions causing the fatality. Effective January 1, 2009, the division shall appoint an existing full-time employee to act as a family liaison. The family liaison shall have the responsibility during an accident investigation to keep the families of miners informed of the progress and findings of the accident investigation. The family liaison shall be trained in mining and in grief counseling.
- (15) The commissioner shall assess civil monetary penalties against licensed facilities for violations of laws in this chapter and KRS Chapter 352 pertaining to roof control plans, mine seal construction plans, unsafe working conditions, and mine ventilation plans that could lead to imminent danger or serious physical injury. The Energy and Environment Cabinet shall promulgate administrative regulations within ninety (90) days of July 12, 2006, providing for the manner and method of the assessment of the penalties and appeals therefrom. In no event shall the civil penalty assessed pursuant to this subsection for the violation exceed five thousand dollars

(\$5,000). Nothing contained in this subsection shall be construed to impair or contravene the authority granted under KRS 351.025(2) for imposing penalties against licensed facilities.

➔Section 31. KRS 351.090 is amended to read as follows:

- (1) The Governor shall appoint an adequate number of mine safety specialists to ensure at least two (2) inspections annually at all surface mines, provided the mine is in operation the entire year or the proportionate thereof, of all mines in the Commonwealth and sufficient additional mine safety specialists to enable the commissioner to provide adequate surveillance of coal mines where conditions or management policy dictate that more inspections are needed to ensure the safety of miners; except the commissioner shall inspect all underground coal mines not less than six (6) times annually. Two (2) of the six (6) general inspections of underground mines shall be full electrical inspections. One (1) or more of the appointees shall be designated as electrical mine inspectors. The Governor shall also appoint an adequate number of mine safety specialists to perform safety analysis and safety instruction. The term of office of each mine safety specialist shall be during the period of capable, efficient service and good behavior.
- (2) All mine safety specialists shall have a thorough knowledge of first aid and mine rescue and be able to instruct in first aid and mine rescue, and shall possess thoroughly the knowledge required of the commissioner by KRS 351.060, and shall have a thorough and practical knowledge of mining gained by at least five (5) years' experience in coal mines in the Commonwealth. For the purposes of this subsection, a degree in mining engineering from a recognized institution shall be deemed equivalent to two (2) years of practical experience in coal mines or an associate degree in mining technology from a recognized institution shall be deemed equivalent to one (1) year practical experience in coal mines. A person desiring to use a mining engineering or technology degree for practical experience credit shall file proof of having received a degree prior to examination.
- (3) No person shall be appointed to the office of mine safety specialist unless he or she holds a current mine foreman's certificate. A person appointed as mine safety specialist shall pass an examination administered by the ~~department~~^{board}. The commissioner may recommend to the Governor applicants for the positions of mine safety specialist who have successfully passed the examination and are proved by worth, training, and experience to be the most competent of the applicants.
- (4) Mine safety specialists shall be of good moral character and temperate habits and shall not, while holding office, act in any official capacity in operating any coal mine.
- (5) No reimbursement for traveling expenses shall be made except on an itemized accounting for the expenses submitted by mine safety specialists who shall verify upon oath that the expenses were incurred in the discharge of their official duties.
- (6) Each mine safety specialist shall take oath, which shall be certified by the officer administering it. The oath, in writing, and the certificate, shall be filed in the office of the Secretary of State.
- (7) Each mine inspector, mine safety analyst, electrical inspector, and mine safety instructor shall give bond with surety approved by the Governor.
- (8) Each mine safety specialist shall provide authorization to the division to perform a criminal background check by means of a fingerprint check by the Department of Kentucky State Police. The results of the state criminal background check shall be sent to the director of the division. Any fee charged by the Department of Kentucky State Police shall be an amount no greater than the actual cost of processing the request and conducting the search.

➔Section 32. KRS 351.102 is amended to read as follows:

- (1) No person shall be assigned mining duties by a licensee as a laborer or supervisor unless the person holds a valid certificate of competency and qualification or a valid permit as trainee issued in accordance with this section.
- (2) The division shall require that all applicants for certified miner and initial applicants for other mining certifications pursuant to this chapter shall submit proof that he or she is drug and alcohol free. The proof shall be submitted in accordance with KRS 351.182 and 351.183.
- (3) A permit as trainee miner shall be issued by the commissioner to any person who has submitted proof that he or she is drug and alcohol free in accordance with KRS 351.182 and 351.183, and has completed a program of education of a minimum of forty (40) hours for underground mining or twenty-four (24) hours for surface

mining comprised of sixteen (16) hours of classroom training and eight (8) hours of mine specifics or who has completed a certified mine technology program and has passed an examination approved by the commissioner. An additional eight (8) hours of mine-specific training shall be administered to the trainee miner by the licensee, which training shall be documented on a form approved by the commissioner. This education and training program shall be determined and established by the ~~department~~**board**, as provided in KRS 351.106. A requirement for a permit as a trainee miner shall be one (1) hour of classroom training dedicated to alcohol and substance abuse education.

- (4) Trainee miners shall work within the sight and sound of a certified miner.
- (5) Any miner holding a certificate of competency and qualification may have one (1) person working with him and under his direction as a trainee miner. Any person certified as a mine foreman or assistant mine foreman shall have no more than five (5) persons working under his supervision or direction as trainee miners for the purpose of learning and being instructed in the duties of underground coal mining.
- (6) A certificate of competency and qualification as a miner shall be issued by the commissioner to any person who has a minimum of forty-five (45) working days' experience within a thirty-six (36) month period as a trainee miner and demonstrated competence as a miner. Any trainee miner who exceeds six (6) months in obtaining the forty-five (45) working days of experience required in this section, shall submit proof of alcohol- and drug-free status in accordance with the provisions of KRS 351.182 and 351.183.
- (7) All examinations for the certification of a miner shall be of a practical nature and shall determine the competency and qualification of the applicant to engage in the mining of coal with reasonable safety to himself and his fellow employees. The examination may be given orally, upon approval by the commissioner, if the miner is unable to read or comprehend a written examination.
- (8) Examinations shall be held in any regional office during regular business hours.
- (9) If the commissioner or his authorized representative finds that an applicant is not qualified and competent, he shall notify the applicant as soon as possible, but in no case more than thirty (30) days after the date of examination.
- (10) Any applicant aggrieved by an action of the commissioner or his authorized representative in failing or refusing to issue a certificate of qualification and competency shall, within ten (10) days of notice of the action complained of, appeal to the commissioner who shall either affirm the action or issue the certificate to the applicant.
- (11) If the applicant is aggrieved by the action of the commissioner, he may appeal to the commission which shall hold a hearing on the matter in accordance with KRS Chapter 13B.
- (12) The applicant may appeal from the final order of the commission by filing in the Franklin Circuit Court a petition for appeal in accordance with KRS Chapter 13B.

➔Section 33. KRS 351.103 is amended to read as follows:

- (1) All persons possessing valid certificates as mine inspectors, electrical inspectors, mine safety instructors, assistant mine foreman, mine foreman, shotfirer, and other mining specialties as established by the ~~department~~**board**, or certified miner shall be eligible to work at any time as miners, provided they fulfill the annual requirements for retraining and reeducation as provided in KRS 351.106.
- (2) Supervisory, clerical, and technically trained employees of the mine operator whose work contributes only indirectly to mine operations shall not be required to possess a miner's certificate of competency and qualification.

➔Section 34. KRS 351.1041 is amended to read as follows:

- (1) The Mine Safety Review Commission is created as an independent governmental entity attached to the Energy and Environment Cabinet, Office of the Secretary, for administrative purposes. The commission shall:
 - (a) Conduct hearings and issue orders regarding a licensee, coal operation, or other person involved in the mining of coal in accordance with KRS 351.194;
 - (b) Jointly with the department establish a process for the department's referral of allegations of mine safety violations, allegations of unsafe working conditions, violation of a miner's drug- and alcohol-free condition of certification, or supervisory personnel's failure to immediately report a fatal accident or an accident involving serious physical injury to the commission for adjudication;

- (c) Make any recommendations to the department that it believes appropriate upon its review, consideration, and analysis of:
1. All reports of coal mining fatalities and serious physical injuries provided by the commissioner under KRS 351.070(14);
 2. Any case in which a miner or a mine owner or operator, in the professional opinion of the department has a history of significant and substantial safety violations even though there has been no serious physical injury or death resulting from the violations;
 3. Any case in which a miner or a mine owner or operator has been convicted of a criminal charge for a violation of a federal mine safety standard or standards; and
 4. Any case in which the Federal Mine Safety and Health Administration has made a recommendation relating to certification of an individual certified under this chapter.
- (2) The Mine Safety Review Commission shall consist of three (3) members appointed by the Governor subject to the consent of the Senate and the House of Representatives in accordance with KRS 11.160. Of the members of the Mine Safety Review Commission first appointed under this section, one (1) shall be appointed for a term of one (1) year; one (1) shall be appointed for a term of two (2) years; and one (1) shall be appointed for a term of three (3) years. After the initial appointments, members of the ~~commission board~~ shall be appointed for terms of four (4) years. A member may be reappointed at the expiration of his or her previous term. Members shall continue to serve until a successor is appointed and qualified.
- (3) The members of the Mine Safety Review Commission shall have the qualifications required of Judges of the Court of Appeals, except for residence in a district, and shall be subject to the same standards of conduct made applicable to a part-time judge by the Rules of the Kentucky Supreme Court. The members shall receive the per diem equivalent of the salary of a Judge of the Court of Appeals for each day spent in conducting the business of the commission.
- (4) The Governor shall designate a member of the Mine Safety Review Commission to serve as chair and shall fill any vacancy in the office of chair.
- (5) The Governor may remove any member for good cause, including violation of the Code of Judicial Conduct and repeated failure to perform satisfactorily the specific duties assigned in this chapter or KRS Chapter 352. The Governor may remove the member only after furnishing him or her with a written copy of the charges against that member and holding a public hearing if requested by the member.
- (6) The commission shall meet on the call of the chair or a majority of the members of the commission.
- (7) The Energy and Environment Cabinet shall provide administrative services to the Mine Safety Review Commission. If the commission deems it necessary to employ hearing officers to assist it, the Energy and Environment Cabinet shall employ hearing officers to assist the commission in accordance with KRS Chapter 13B and this chapter, notwithstanding the provisions of KRS 13B.030(2)(b).
- (8) The commission may conduct hearings, compel the attendance of witnesses, administer oaths, and conduct oversight activities as may be required to ensure the full implementation of its duties.
- (9) The department shall provide the Mine Safety Review Commission with all information requested by the commission for the fulfillment of its responsibilities under this chapter and KRS Chapter 352.
- (10) The secretary of the Energy and Environment Cabinet shall effectuate the hiring of any staff deemed necessary and affordable for the efficient operations of the Mine Safety Review Commission. This may include an executive director, general counsel, or other administrative support positions, to be appointed in accordance with KRS 12.010 and 12.050.

➔Section 35. KRS 351.1045 is amended to read as follows:

The members of the Mine Safety Review Commission ~~and the Mining Board~~ shall complete a forty (40) hour new miner training course if they have not completed the course within the previous two (2) years. In addition, they shall participate in a site visit of an underground mine and a surface coal mine and thereafter make a site visit of an underground mine at least every three (3) years.

➔Section 36. KRS 351.106 is amended to read as follows:

- (1) The ~~department~~~~[Mining Board]~~ shall establish criteria and standards for a program of education and training to be required of prospective miners, miners, and all certified persons. This education and training shall be provided in a manner determined by the commissioner to be adequate to meet the standards established by the ~~department~~~~[board]~~, which shall include as a minimum the requirements of KRS 351.102 and the requirements of the federal government for the training of miners for new work assignments, and at least sixteen (16) hours of annual retraining and reeducation for all certified persons, of which thirty (30) minutes annually shall be dedicated to alcohol and substance abuse education. Effective January 1, 2009, in addition, six (6) hours of annual training on changes in mine safety laws, safe retreat mining practices, disciplinary cases litigated before the Mine Safety Review Commission, changes in mine safety technology, and ways to improve safe working procedures shall be required for all mine foremen. This annual training for mine foremen shall be provided exclusively by the division.
- (2) One (1) hour of initial substance abuse training and education shall be required as part of the certified miner's first annual retraining conducted in a classroom that occurs after August 1, 2006. This requirement shall not apply to certified persons who received the one (1) hour initial substance abuse training and education as part of their forty (40) hour or twenty-four (24) hour new miner training.
- (3) In addition to the thirty (30) minutes of annual alcohol and substance abuse education required for certified miners, supervisory personnel shall be required to receive an additional thirty (30) minutes of alcohol and substance abuse awareness training annually.
- (4) Beginning with the first full calendar year after the effective date established by the ~~department~~~~[board]~~ and during each calendar year thereafter, each certified miner shall receive at least sixteen (16) hours of retraining and reeducation.
- (5) Newly hired experienced miner training shall satisfy the miner's annual retraining requirement if a time lapse occurs between the miner's last training anniversary date and the next scheduled training anniversary date for the mine where he is newly employed, if the miner has complied with the annual retraining requirements within the last twelve (12) months from the date of his newly hired experienced miner training.
- (6) Retraining and reeducation sessions shall be conducted at times and in numbers to reasonably assure each certified miner an opportunity to attend.
- (7) The licensee shall pay all certified miners their regular wages and benefits while they receive training required by the department.
- (8) Willful failure of a working miner to complete annual retraining and reeducation requirements shall constitute grounds for revocation, suspension, or probation of his certificate.
- (9) If the department discovers a miner working without proper training or the licensee cannot provide proof of training, the miner shall be withdrawn immediately from the mine and the licensee shall pay the miner his regular wages until the training is administered and properly documented.
- (10) When employment is terminated, the licensee shall provide the employee a copy of his training records, upon request. If the employee does not request his training records immediately, the licensee shall, within fifteen (15) days, provide the employee with those training records.
- (11) The ~~department~~~~[board]~~ may, upon its own motion or whenever requested to do so by the commissioner, deem applicable certificates issued by other states to be proof of training and education equal to the requirements of KRS 351.102 or deem training provided by appropriate federal agencies to be adequate to meet training and education requirements established by the ~~department~~~~[board]~~, if the training and education meet the minimum requirements of this chapter.
- (12) The secretary may promulgate administrative regulations necessary to establish a program to implement the provisions of this chapter according to the criteria and standards established by the ~~department~~~~[board]~~. This program shall include but not be limited to implementation of a program of instruction and the conduct of examinations to test each applicant's knowledge and understanding of the training and instruction.
- (13) The commissioner shall keep and maintain current records on all certified miners, all of which shall be maintained by computer for ready access. The commissioner shall not grant certification to any person that, at the time of application, had his or her miner certification, foreman certification, electrician certification, or any other mining specialty certification suspended or revoked by another state. If a person has his or her miner certification, foreman certification, electrician certification, or other mining specialty certification probated in another state, the commissioner~~[or the Mining Board]~~ may, at his or ~~her~~~~[its]~~ discretion, grant the equivalent

certification. However, that certification shall be placed on probation in Kentucky until the probationary period in the other state has expired.

- (14) The commissioner is authorized and directed to utilize state mine safety specialists, private and public institutions of education, and other qualified persons available to him in implementing the program of instruction and examination.
- (15) ~~[(The commissioner may make recommendations to the board as he may deem appropriate. The commissioner shall provide information to the board at the board's request.)]~~ The commissioner is authorized and directed to utilize state and federal moneys and personnel that may be available to the department for educational and training purposes in the implementation of the provisions of this chapter.
- (16) All training and education required by this section may be conducted in classrooms, on the job, or in simulated mines.

➔Section 37. KRS 351.110 is amended to read as follows:

- (1) The **department**~~[board]~~ shall not admit any applicant for certification as a mine inspector, mine safety analyst, electrical inspector, mine safety instructor, mine foreman, or assistant mine foreman to take an examination given by it unless the applicant has the experience required by this chapter, and has submitted proof that he or she is drug and alcohol free in accordance with KRS 351.182 and 351.183, and has presented to the examiner at the time of registration for the examination a United States postal money order or certified check in the amount of fifty dollars (\$50). All money orders or certified checks required herein shall be made payable to the State Treasurer, Frankfort, Kentucky.
- (2) All money paid to the State Treasurer for licenses and fees required by this chapter shall be for the sole use of the department and shall be in addition to any moneys appropriated by the General Assembly for the use of the department.
- (3) The **department**~~[board]~~ may refuse to examine any applicant who cannot readily understand the written English language or cannot express himself intelligently in English, or who is obviously intoxicated.

➔Section 38. KRS 351.120 is amended to read as follows:

- (1) The commissioner shall issue a certificate to each person who possesses the qualifications required by law for mine inspector, electrical inspector, surface or underground mine safety instructor, surface mine safety analyst, assistant mine foreman, mine foreman, shotfirer, and other mining specialties as established by the **department**~~[board]~~, or miner who has passed the examination given by direction of the **department**~~[board]~~ for that position, and who has met the requirements for drug- and alcohol-free status.
- (2) The certificate shall be in such form as the commissioner prescribes, shall be signed by the commissioner, and shall show that the holder has passed the required examination and possesses the qualifications required by law for mine inspector, electrical inspector, surface or underground mine safety instructor, surface mine safety analyst, assistant mine foreman, mine foreman, shotfirer, and other mining specialties as established by the **department**~~[board]~~, or miner and is authorized to act as such.
- (3) Certificates issued to mine foremen and assistant mine foremen shall be classified as follows:
 - (a) Mine foreman certificates, authorizing the holder to act as foreman for all classes of coal mines; and
 - (b) Assistant mine foreman certificates, authorizing the holder to act as assistant foreman.
- (4) Any mine foreman or assistant mine foreman may act as a fire boss or mine examiner. This shall not apply to persons holding a second class mine foreman certificate issued before June 16, 1972.
- (5) The class of mine foreman's certificate awarded shall be determined by the **department**~~[board]~~ according to the experience of the applicant.
- (6) No certificate shall be granted to any person who does not present to the **department**~~[board]~~ satisfactory evidence, in the form of affidavits, that the applicant has had the required practical experience in underground or surface coal mines. A data sheet shall be filed by each applicant showing places of employment, beginning month and year and ending month and year employed by each company and list jobs performed, showing at least the number of required years. Affidavit and data sheet forms shall be furnished by the department. The applicant also shall submit proof that he or she is drug and alcohol free. The proof shall be submitted in accordance with KRS 351.182 and 351.183. For the purpose of this section, persons holding a four (4) year degree in mining engineering from a recognized institution shall be credited with the equivalent of two (2)

years of practical experience in coal mines when applying for any mine foreman or assistant mine foreman certificate. Persons holding an associate degree in mining from a recognized institution shall be credited with the equivalent of two (2) years' experience when applying for a mine foreman certificate and one (1) year when applying for an assistant mine foreman certificate. Persons desiring to use their mining engineering or mining technology degree as credit for practical experience toward a mine foreman or assistant mine foreman certificate shall file proof of having received their degree prior to the examination.

- (7) Applicants for an underground mine foreman certificate shall have five (5) years' practical underground coal mining experience acquired after achieving the age of eighteen (18), with at least one (1) year of this experience acquired on an active working section of an underground mine. Applicants for an underground assistant mine foreman certificate shall have three (3) years' practical underground experience acquired after achieving the age of eighteen (18), with at least one (1) year of this experience acquired on an active working section of an underground mine.
- (8) Applicants for surface mine foremen certification shall have three (3) years' practical surface mine experience acquired after achieving the age of eighteen (18); for surface mine foreman certification with a specialty in coal extraction, at least one (1) year of the required practical experience shall have been acquired from direct involvement in the mining or extraction of coal at a surface mine. For a surface mine foreman certification with a specialty in postmining activities, at least one (1) year of the required experience shall have been acquired from direct involvement in the performance of such activities at a surface or underground mine, coal preparation plant, or other coal-handling facility. Notwithstanding any requirement in this subsection to the contrary, a person having three (3) years' of underground or surface mining experience shall qualify for a surface mine foreman certification with a specialty in postmining activities if the person has documented experience of at least one (1) year in the performance of these activities. Persons holding a surface mine foreman certificate prior to July 15, 1998, are not affected by this section.
- (9) Persons possessing certificates of qualifications to act as mine inspector, mine foreman, assistant mine foreman, or fire boss prior to July 15, 1982, are not affected by this section.
- (10) When approved by the commissioner, a person who has successfully completed any mine foreman or assistant mine foreman examination and submitted proof that he or she is drug and alcohol free in accordance with KRS 351.182 and 351.183 may be granted a temporary certification that is valid only until the ~~department~~ ^{board} acts upon his or her certification at its next regularly scheduled meeting.
- (11) A member of the supervisory personnel shall be present at the working section except in cases of emergencies at all times employees under his supervision are at the working section on coal-producing shifts.
- (12) The commissioner immediately shall suspend any certification for violation of drug- and alcohol-free status or for failure or refusal to submit to a drug and alcohol test authorized by KRS 351.182, 351.183, 351.184, 351.185, and 352.180. The commissioner shall, by certified mail, notify the holder of the certification of his or her suspension and of the following:
 - (a) The right to pursue one (1) of the following options:
 1. Appeal the suspension to the Mine Safety Review Commission within thirty (30) days of the notification; or
 2. Notify the commissioner of the Department for Natural Resources or the director of the Division of Mine Safety within thirty (30) days of the notification that the holder intends to be evaluated by a medical professional trained in substance treatment, to complete any prescribed treatment, and to submit an acceptable result from a drug and alcohol test as required by KRS 351.182;
 - (b) Failure to file an appeal or failure to notify the commissioner of the Department for Natural Resources or the director of the Division of Mine Safety of the holder's intent to comply with paragraph (a)2. of this subsection within thirty (30) days of the notification shall result in the revocation of all licenses and certifications issued by the Division of Mine Safety for a period of not less than three (3) years, and the holder shall remain ineligible for any other certification issued by the Division of Mine Safety during the revocation period. Certifications and licenses revoked under this paragraph may be reissued by:
 1. Compliance with all training and testing requirements;
 2. Satisfying the requirements of KRS 351.182 and 351.183; and
 3. Compliance with all orders of the Mine Safety Review Commission; and

- (c) The completion of the evaluation, treatment, and submission of an acceptable drug test pursuant to paragraph (a)2. of this subsection or the revocation described under paragraph (b) of this subsection shall be considered a first offense.
- (13) The licenses and certifications of a miner who notifies the commissioner of the Department for Natural Resources or the director of the Division of Mine Safety of his or her intent to comply with subsection (12)(a)2. of this section shall remain suspended until the miner has provided proof of the evaluation and successful completion of any prescribed treatment and has submitted a negative drug and alcohol test as required by KRS 351.182 to the division. The drug and alcohol test shall be taken no more than thirty (30) days prior to the submission of the proof required by this section. Upon receipt and review of the proof by the division, the miner's licenses and certifications shall be restored. In the event that the miner fails to successfully complete the evaluation, treatment, and drug test within one hundred twenty (120) days of his or her notification pursuant to subsection (12)(a)2. of this section, the miner's licenses and certifications issued by the division shall be revoked for a period prescribed under KRS 351.990(8). The one hundred twenty (120) day time period set out in this section shall be extended upon proof that the miner is complying with the recommendations of the medical professional.
- (14) If the suspension described in subsection (12) of this section occurs following the miner's first offense as described in this section or KRS 351.184, the notification sent to the miner shall not include the option of notifying the division of the miner's intent to seek an evaluation and treatment. The miner shall only have the right to appeal the suspension to the Mine Safety Review Commission within thirty (30) days of notification. If the miner fails to appeal the suspension, the penalty shall be assessed according to KRS 351.990(8)(b) or (c).

➔Section 39. KRS 351.122 is amended to read as follows:

- (1) In lieu of an examination prescribed by law or regulation, the ~~department~~~~board~~ may enter into a reciprocal agreement with another state regarding the certification of miners. The ~~department~~~~board~~ may, pursuant to a reciprocal agreement, issue to any person holding a certificate issued by another state a certificate permitting him or her to perform similar tasks in the Commonwealth if:
- The ~~department~~~~board~~ finds that the requirements for certification in the other state are substantially equivalent to those of Kentucky;
 - The person passes only the applicable part of the examination with regard to Kentucky law which is uniquely different from the other state;
 - The person has submitted proof, in accordance with KRS 351.182, that he or she is drug and alcohol free;
 - The person's retraining is sufficient to meet Kentucky requirements; and
 - The person's certification in Kentucky or in any other state has not been suspended, revoked, or probated.
- (2) Upon receipt of notice from a reciprocal state of a disciplinary action relating to any of the certifications or licenses issued to a miner who also holds corresponding licenses or certifications issued by the Division of Mine Safety, the commissioner shall impose analogous sanctions against the miner's Kentucky licenses or certifications. These sanctions shall terminate upon proof of compliance with the orders from the reciprocal state.

➔Section 40. KRS 351.125 is amended to read as follows:

The department shall provide first-aid training incorporating all training required by the state's approved program for emergency medical technicians or the department's mine emergency technician program which is applicable to mines. Each candidate for certification as a mine foreman shall complete the department's first-aid course of instruction and shall pass an examination on the course as a prerequisite for certification. ~~The course of instruction and examination shall have prior approval of the board.~~

➔Section 41. KRS 352.010 is amended to read as follows:

- (1) As used in this chapter, unless the context requires otherwise:
- "Abandoned workings" means excavations, either caved or sealed, that are deserted and in which further mining is not intended, or open workings which are ventilated and not inspected regularly;
 - "Active workings" means all places in a mine that are ventilated and inspected regularly;

- (c) "Approved" means that a device, apparatus, equipment, machinery, or practice employed in the mining of coal has been approved by the commissioner of the Department for Natural Resources;
- (d) "Assistant mine foreman" means a certified person designated to assist the mine foreman in the supervision of a portion or the whole of a mine or of the persons employed therein;
- (e) ~~["Board" means the Mining Board created in KRS 351.105;~~
- ~~(f)~~—"Commercial mine" means any coal mine from which coal is mined for sale, commercial use, or exchange. This term shall in no instance be construed to include a mine where coal is produced for own use;
- ~~(f)~~~~(g)~~ "Commissioner" means commissioner of the Department for Natural Resources;
- ~~(g)~~~~(h)~~ "Department" means the Department for Natural Resources;
- ~~(h)~~~~(i)~~ "Drift" means an opening through strata or coal seams with opening grades sufficient to permit coal to be hauled therefrom, or which is used for the purpose of ventilation, drainage, ingress, egress, and other purposes in connection with the mining of coal;
- ~~(i)~~~~(j)~~ "Director" means the director of the Division of Mine Safety;
- ~~(j)~~~~(k)~~ "Excavations and workings" means the excavated portions of a mine;
- ~~(k)~~~~(l)~~ "Face equipment" means mobile or portable mining machinery having electric motors or accessory equipment normally installed or operated in by the last open crosscut in any entry or room;
- ~~(l)~~~~(m)~~ "Fire boss" (often referred to as mine examiner) means a person certified as a mine foreman or assistant mine foreman who is designated by management to examine a mine or part of a mine for explosive gas or other dangers before a shift crew enters;
- ~~(m)~~~~(n)~~ "Gassy mine." All underground mines shall be classified as gassy or gaseous;
- ~~(n)~~~~(o)~~ "High voltage" means any voltage of one thousand (1,000) volts or more;
- ~~(o)~~~~(p)~~ "Imminent danger" means the existence of any condition or practice which could reasonably be expected to cause death or serious physical injury before the condition or practice can be abated;
- ~~(p)~~~~(q)~~ "Inactive workings" shall include all portions of a mine in which operations have been suspended for an indefinite period, but have not been abandoned;
- ~~(q)~~~~(r)~~ "Intake air" means air that has not passed through the last working place of the split or by the unsealed entrances to abandoned workings and by analysis contains not less than nineteen and one-half percent (19.5%) of oxygen, no dangerous quantities of flammable gas, and no harmful amounts of poisonous gas or dust;
- ~~(r)~~~~(s)~~ "Licensee" means any owner, operator, lessee, corporation, partnership, or other person who procures a license from the department to operate a coal mine;
- ~~(s)~~~~(t)~~ "Low voltage" means up to and including six hundred sixty (660) volts;
- ~~(t)~~~~(u)~~ "Medium voltage" means voltages greater than six hundred sixty (660) and up to nine hundred ninety-nine (999) volts;
- ~~(u)~~~~(v)~~ "Mine" means any open pit or any underground workings from which coal is produced for sale, exchange, or commercial use, and all shafts, slopes, drifts, or inclines leading thereto, and includes all buildings and equipment, above or below the surface of the ground, used in connection with the workings. Workings that are adjacent to each other and under the same management and which are administered as distinct units shall be considered separate mines;
- ~~(v)~~~~(w)~~ "Mine foreman" means a certified person whom the licensee, mine manager, or superintendent places in charge of the workings of the mine and of persons employed therein;
- ~~(w)~~~~(x)~~ "Mine manager" means a certified or noncertified person whom the licensee places in charge of a mine or mines and whose duties include but are not limited to operations at the mine or mines and supervision of personnel when qualified to do so;
- ~~(x)~~~~(y)~~ "NAD 83" means the North American Datum, 1983 version, in feet units;

- (y)~~(z)~~ "Open-pit mine" shall include open excavations and open-cut workings including auger operations and highwall mining systems for the extraction of coal;
- (z)~~(aa)~~ "Operator" means the licensee, owner, lessee, or other person who operates or controls a coal mine;
- (aa)~~(ab)~~ "Permissible" means that any equipment, device, or explosive that has been approved by the United States Bureau of Mines, the Mining Enforcement and Safety Administration, or the Mine Safety and Health Administration meets all requirements, restrictions, exceptions, limitations, and conditions attached to the classification;
- (ab)~~(ac)~~ "Preshift examination" refers to the examination of an underground mine or part of a mine where miners are scheduled to work or travel, and shall be conducted not more than three (3) hours before any oncoming shift;
- (ac)~~(ad)~~ "Return air" means air that has passed through the last active working place on each split, or air that has passed through abandoned, inaccessible, or pillared workings;
- (ad)~~(ae)~~ "Serious physical injury" means an injury which has a reasonable potential to cause death;
- (ae)~~(af)~~ "Shaft" means a vertical opening through the strata that is or may be used, in connection with the mining of coal, for the purpose of ventilation or drainage, or for hoisting men, coal, or materials;
- (af)~~(ag)~~ "Single Zone Projection" means the Kentucky Single Zone State Plane Coordinate System of 1983, based on the Lambert Conformal Conical map projection with double standard parallels on the North American Datum, 1983 version, as established in 10 KAR 5:010;
- (ag)~~(ah)~~ "Slope" means an inclined opening used for the same purpose as a shaft;
- (ah)~~(ai)~~ "Superintendent" means the person who, on behalf of the licensee, has immediate supervision of one (1) or more mines;
- (ai)~~(aj)~~ "Supervisory personnel" shall mean a person or persons certified under the provisions of KRS Chapter 351 to assist in the supervision of a portion or the whole of the mine or of the persons employed therein;
- (aj)~~(ak)~~ "Tipple or dumping point" means the structure where coal is dumped or unloaded from the mine car into railroad cars, trucks, wagons, or other means of conveyance;
- (ak)~~(al)~~ "Working face" means any place in a coal mine at which the extraction of coal from its natural deposit in the earth is performed during the mining cycle;
- (al)~~(am)~~ "Working place" means the area of a coal mine in by the last open crosscut;
- (am)~~(an)~~ "Working section" means all areas of a coal mine from the loading point to and including the working faces; and
- (an)~~(ao)~~ "Workmanlike manner" means consistent with established practices and methods utilized in the coal industry.
- (2) The definitions in KRS 351.010 apply also to this chapter, unless the context requires otherwise.
- (3) Except as the context otherwise requires, this chapter applies only to commercial mines as defined in KRS 351.010 and shall not apply to electrical facilities owned, operated, or otherwise controlled by a retail electric supplier or generation and transmission cooperative as defined in KRS 278.010 or organized under KRS Chapter 279 for the purpose of communication, metering, or for the generation, control, transformation, transmission, and distribution of electric energy located in buildings used exclusively by utilities for such purposes or located outdoors on property owned or leased by the utility or on public highways, streets, roads, or outdoors by established easement rights on private property and that are covered by the National Electric Safety Code (NESCA) or other applicable safety codes, or other authorities having jurisdiction and shall not apply to installations under the exclusive control of utilities for the purpose of communication, metering, or for the generation, control, transformation, transmission, and distribution of electric energy located in buildings used exclusively by utilities for such purposes or located outdoors on property owned or leased by the utility or on public highways, streets, roads, or outdoors by established rights on private property.

➔Section 42. KRS 352.310 is amended to read as follows:

Any fire boss who fails to perform his duties, or who makes a false report of the condition of any place in the portion of the mine allotted to him for examination, shall be suspended by the mine foreman, and his name shall be given to the mine inspector for prosecution. If he is found guilty by the *Mine Safety Review Commission*~~board~~, he shall return his certificate of qualification to the department.

➔Section 43. KRS 224.10-100 is amended to read as follows:

In addition to any other powers and duties vested in it by law, the cabinet shall have the authority, power, and duty to:

- (1) Exercise general supervision of the administration and enforcement of this chapter, and all rules, regulations, and orders promulgated thereunder;
- (2) Prepare and develop a comprehensive plan or plans related to the environment of the Commonwealth;
- (3) Encourage industrial, commercial, residential, and community development which provides the best usage of land areas, maximizes environmental benefits, and minimizes the effects of less desirable environmental conditions;
- (4) Develop and conduct a comprehensive program for the management of water, land, and air resources to assure their protection and balance utilization consistent with the environmental policy of the Commonwealth;
- (5) Provide for the prevention, abatement, and control of all water, land, and air pollution, including but not limited to that related to particulates, pesticides, gases, dust, vapors, noise, radiation, odor, nutrients, heated liquid, or other contaminants;
- (6) Provide for the control and regulation of surface coal mining and reclamation in a manner to accomplish the purposes of KRS Chapter 350;
- (7) Secure necessary scientific, technical, administrative, and operational services, including laboratory facilities, by contract or otherwise;
- (8) Collect and disseminate information and conduct educational and training programs relating to the protection of the environment;
- (9) Appear and participate in proceedings before any federal regulatory agency involving or affecting the purposes of the cabinet;
- (10) Enter and inspect any property or premises for the purpose of investigating either actual or suspected sources of pollution or contamination or for the purpose of ascertaining compliance or noncompliance with this chapter, or any regulation which may be promulgated thereunder;
- (11) Conduct investigations and hold hearings and compel the attendance of witnesses and the production of accounts, books, and records by the issuance of subpoenas;
- (12) Accept, receive, and administer grants or other funds or gifts from public and private agencies including the federal government for the purpose of carrying out any of the functions of the cabinet. The funds received by the cabinet shall be deposited in the State Treasury to the account of the cabinet;
- (13) Request and receive the assistance of any state or municipal educational institution, experiment station, laboratory, or other agency when it is deemed necessary or beneficial by the cabinet in the performance of its duties;
- (14) Advise, consult, and cooperate with other agencies of the Commonwealth, other states, the federal government, and interstate and interlocal agencies, and affected persons, groups, and industries;
- (15) Formulate guides for measuring presently unidentified environmental values and relationships so they can be given appropriate consideration along with social, economic, and technical considerations in decision making;
- (16) Monitor the environment to afford more effective and efficient control practices, to identify changes and conditions in ecological systems, and to warn of emergency conditions;
- (17) Adopt, modify, or repeal with the recommendation of the commission any standard, regulation, or plan ~~specified in KRS 224.1-110(5) and (6)~~;
- (18) Issue, after hearing, orders abating activities in violation of this chapter, or the provisions of this chapter, or the regulations promulgated pursuant thereto and requiring the adoption of the remedial measures the cabinet deems necessary;

- (19) Issue, continue in effect, revoke, modify, suspend, or deny under such conditions as the cabinet may prescribe and require that applications be accompanied by plans, specifications, and other information the cabinet deems necessary for the following permits:
- (a) Permits to discharge into any waters of the Commonwealth, and for the installation, alteration, expansion, or operation of any sewage system; however, the cabinet may refuse to issue the permits to any person, or any partnership, corporation, etc., of which the person owns more than ten percent (10%) interest, who has improperly constructed, operated, or maintained a sewage system willfully, through negligence, or because of lack of proper knowledge or qualifications until the time that person demonstrates proper qualifications to the cabinet and provides the cabinet with a performance bond;
 - (b) Permits for the installation, alteration, or use of any machine, equipment, device, or other article that may cause or contribute to air pollution or is intended primarily to prevent or control the emission of air pollution; or
 - (c) Permits for the establishment or construction and the operation or maintenance of waste disposal sites and facilities;
- (20) May establish, by regulation, a fee or schedule of fees for the cost of processing applications for permits authorized by this chapter, and for the cost of processing applications for exemptions or partial exemptions which may include but not be limited to the administrative costs of a hearing held as a result of the exemption application, except that applicants for existing or proposed publicly owned facilities shall be exempt from any charge, other than emissions fees assessed pursuant to KRS 224.20-050, and that certain nonprofit organizations shall be charged lower fees to process water discharge permits under KRS 224.16-050(5);
- (21) May require for persons discharging into the waters or onto the land of the Commonwealth, by regulation, order, or permit, technological levels of treatment and effluent limitations;
- (22) Require, by regulation, that any person engaged in any operation regulated pursuant to this chapter install, maintain, and use at such locations and intervals as the cabinet may prescribe any equipment, device, or test and the methodologies and procedures for the use of the equipment, device, or test to monitor the nature and amount of any substance emitted or discharged into the ambient air or waters or land of the Commonwealth and to provide any information concerning the monitoring to the cabinet in accordance with the provisions of subsection (23) of this section;
- (23) Require by regulation that any person engaged in any operation regulated pursuant to this chapter file with the cabinet reports containing information as to location, size, height, rate of emission or discharge, and composition of any substance discharged or emitted into the ambient air or into the waters or onto the land of the Commonwealth, and such other information the cabinet may require;
- (24) Promulgate regulations, guidelines, and standards for waste planning and management activities, approve waste management facilities, develop and publish a comprehensive statewide plan for nonhazardous waste management which shall contain but not be limited to the provisions set forth in KRS 224.43-345, and develop and publish a comprehensive statewide plan for hazardous waste management which shall contain but not be limited to the following:
- (a) A description of current hazardous waste management practices and costs, including treatment and disposal, within the Commonwealth;
 - (b) An inventory and description of all existing facilities where hazardous waste is being generated, treated, recycled, stored, or disposed of, including an inventory of the deficiencies of present facilities in meeting current hazardous waste management needs and a statement of the ability of present hazardous waste management facilities to comply with state and federal laws relating to hazardous waste;
 - (c) A description of the sources of hazardous waste affecting the Commonwealth including the types and quantities of hazardous waste currently being generated and a projection of such activities as can be expected to continue for not less than twenty (20) years into the future; and
 - (d) An identification and continuing evaluation of those locations within the Commonwealth which are naturally or may be engineered to be suitable for the establishment of hazardous waste management facilities, and an identification of those general characteristics, values, and attributes which would render a particular location unsuitable, consistent with the policy of minimizing land disposal and encouraging the treatment and recycling of the wastes.

The statewide waste management plans shall be developed consistent with state and federal laws relating to waste;

- (25) Perform other acts necessary to carry out the duties and responsibilities described in this section;
- (26) Preserve existing clean air resources while ensuring economic growth by issuing regulations, which shall be no more stringent than federal requirements, setting maximum allowable increases from stationary sources over baseline concentrations of air contaminants to prevent significant deterioration in areas meeting the state and national ambient air quality standards;
- (27) Promulgate regulations concerning the bonding provisions of subsection (19)(a) of this section, setting forth bonding requirements, including but not limited to requirements for the amount, duration, release, and forfeiture of the bonds. All funds from the forfeiture of bonds required pursuant to this section shall be placed in the State Treasury and credited to a special trust and agency account which shall not lapse. The account shall be known as the "sewage treatment system rehabilitation fund" and all moneys placed in the fund shall be used for the elimination of nuisances and hazards created by sewage systems which were improperly built, operated, or maintained, and insofar as practicable be used to correct the problems at the same site for which the bond or other sureties were originally provided;
- (28) Promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet; and
- (29) Through the secretary or designee of the secretary, enter into, execute, and enforce reciprocal agreements with responsible officers of other states relating to compliance with the requirements of KRS Chapters 350, 351, and 352 and the administrative regulations promulgated under those chapters.

➔Section 44. KRS 350.240 is amended to read as follows:

The Energy and Environment Cabinet may adopt ~~in the manner provided in subsection (17) of KRS 224.10-100 and subsections (5) and (6) of KRS 224.1-110~~ reasonable regulations for the reclamation of land disturbed or removed in the mining of clay. Such regulations shall encourage water impoundments and shall follow the standards established in Article III of the Interstate Mining Compact. The cabinet shall have the authority to adopt such regulations prior to the effective date of the Interstate Mining Compact and irrespective of whether the state becomes a member or withdraws from membership in the Interstate Mining Compact.

➔Section 45. KRS 224.30-175 is amended to read as follows:

All local governments~~, as defined in KRS 224.30-105,~~ may develop, adopt, and maintain a comprehensive program of noise regulation. A~~Such~~ program may include a study of the noise problems resulting from uses and activities within its jurisdiction and the development and adoption of a noise control plan.

➔Section 46. KRS 224.43-815 is amended to read as follows:

~~{(1)}~~ The secretary of the Cabinet for Economic Development and the special assistant to the Governor for coal and energy policy, with the approval of the Governor and the Legislative Research Commission, may execute contracts pursuant to KRS 224.43-810.

~~{(2)}~~ No agreements or contracts may be entered into before a regional integrated waste treatment and disposal demonstration facility has received a certificate of environmental safety and public necessity from the board established in KRS 224.46-820.

➔Section 47. KRS 224.46-520 is amended to read as follows:

- (1) No person shall engage in the storage, treatment, recycling, or disposal of hazardous waste without first notifying the cabinet and obtaining construction and operation permits from the cabinet. The cabinet shall promulgate regulations establishing standards for such permits but in no case shall a permit to construct or operate a hazardous waste site or facility or a regional integrated waste treatment and disposal demonstration facility be issued unless it can be demonstrated that the proposed facility can be integrated into the surroundings in an environmentally compatible manner, including but not limited to, insuring that hydrologic, seismologic, geologic, and soil considerations have been adequately addressed in the permit application and in an operational plan. In no case shall a permit to construct a hazardous waste incinerator, landfill, or other site or facility for the land disposal of hazardous waste be approved or issued prior to notification of the cabinet by the local unit of government of its actions pursuant to KRS 224.40-310(6). The cabinet shall not issue a construction permit to a regional integrated waste treatment and disposal demonstration facility until it has been issued a certificate of environmental safety and public necessity. A person desiring a construction permit shall file an application on forms supplied by the cabinet which shall contain such information as the cabinet

deems necessary and provide evidence that the hazardous waste shall be treated, stored or disposed of in the manner prescribed by the cabinet. The applicant shall not initiate construction at the proposed site of a new facility for the storage, treatment, or disposal of hazardous waste until notice has been given to that portion of the public most likely to be affected by the operation of the proposed facility pursuant to KRS 224.40-310(1) to (5) and until a construction permit for said facility has been issued by the cabinet. The cabinet may consider past performance in this or related fields by the applicant. The cabinet, in making a determination to issue, deny, or condition a construction permit, shall consider the following:

- (a) An evaluation of alternatives, to include other locations and other treatment, storage, and disposal approaches, different from those proposed, available to the applicant;
- (b) An evaluation of the public health, safety, and environmental aspects of the proposals;
- (c) An evaluation of the social and economic impacts of the proposed action on the affected community, to include, at a minimum, changes in property values, community perception and other psychic costs, and the costs and availability of public services, facilities and improvements required to support the facility and protect public health, safety, and the environment;
- (d) An evaluation of mitigation measures to alleviate problems identified in paragraphs (b) and (c) of this subsection; and
- (e) The relationship of the proposal to local planning and existing development.

Except that in the case of hazardous waste incinerators, landfills, or other sites or facilities for the land disposal of hazardous waste, the provisions of paragraphs (c) and (e) of this subsection shall be determined by the local unit of government pursuant to KRS 224.40-310(6); ~~in the case of a regional integrated waste treatment and disposal demonstration facility the provisions of paragraphs (c) and (e) of this subsection shall be determined by the siting board established pursuant to KRS 224.46-820].~~

- (2) The cabinet may prohibit the land disposal of any hazardous wastes. The criteria and list of hazardous waste to be prohibited by the cabinet from land disposal shall be identical to any such criteria and list promulgated by the United States Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act of 1976, as amended, (Public Law 94-580). The land disposal of hazardous waste may be permitted for methods determined by the cabinet to be protective of human health and the environment for as long as the waste remains hazardous.
- (3) In conjunction with the application for permits under this section, the applicant shall establish adequate financial responsibility as follows:
 - (a) The applicant shall file as part of his application for a permit to construct the facility an estimate of the cost of closing the facility after its capacity is reached or operations have otherwise ceased and an estimate of the cost of post-closure care. In the case of storage facilities, the cost of closing shall include the cost of properly disposing of the hazardous waste stored. The cabinet shall evaluate this cost estimate and either accept the estimate as made or shall revise it in accordance with acceptable guidelines, using, where available, actual data on closure costs associated with similar existing facilities. Before a permit to operate can be issued, the applicant for any hazardous waste permit shall assure that the funds needed to close the facility are available by establishing assurance through one (1) or more of the following mechanisms: cash, certificates of deposit, irrevocable credit, or other sureties satisfactory to the cabinet and the mechanism shall be established by agreement with the cabinet. The agreement shall provide that disbursement is permissible only upon written approval of the cabinet and whenever, on the basis of any information, the cabinet determines that the owner or operator is in violation of any of the closure requirements for the facility, that the cabinet shall have the right to use part or all of the closure fund to carry out the closure requirements. The financial institution, surety company, or escrow agent shall release these funds upon receiving a forfeiture order of the cabinet issued pursuant to an appropriate administrative hearing considering one (1) or more closure violations. Upon determination that closure has been satisfactorily accomplished, the cabinet shall release the applicant from further financial responsibility for closure;
 - (b) Any applicant for a hazardous waste disposal permit shall file with the cabinet as part of his application an estimate of the annual cost of post-closure monitoring and routine maintenance at the site. The cabinet shall evaluate the cost estimate, and, after such modification as may be necessary in light of its evaluation, shall give notice of acceptance of the cost estimate. This cost estimate which will be referred to as the annual post-closure operating cost shall then be used to determine the amount of the

post-closure monitoring and maintenance fund to be used for monitoring and maintenance for a period of a minimum of thirty (30) years after facility closure. The post-closure monitoring and maintenance fund shall be cash, irrevocable credit, or other sureties satisfactory to the cabinet and shall be established by an agreement with the cabinet. The agreement shall provide that whenever, on the basis of any information, the cabinet determines that the owner or operator of the facility is in violation of any of the post-closure monitoring and maintenance requirements, the cabinet shall have the right to use part or all of the funds to carry out the post-closure monitoring and maintenance for the facility. The funds shall be released upon receipt of a forfeiture order of the cabinet issued pursuant to an appropriate administrative hearing considering one (1) or more post-closure monitoring and maintenance violations. One (1) year after closure, and annually thereafter for a period of thirty (30) years, the applicant who has carried out all necessary post-closure maintenance and monitoring requirements may upon application to the cabinet be reimbursed out of the post-closure monitoring and maintenance fund an amount equal to the estimated costs for monitoring and routine maintenance for that year. Request for release of funds for reimbursement shall be accompanied by an itemized list of costs incurred. Upon determination that the expenditures incurred are in accordance with the approved plan, or otherwise justified, the cabinet may authorize the release of the funds to the applicant in writing. Any funds remaining in the account following a termination hearing in which the applicant is released of further responsibility shall likewise be released to the applicant; and

- (c) All applicants for any hazardous waste permit shall provide evidence of financial responsibility in an amount and for a time period specified by the cabinet for the purpose of corrective action on and off-site and satisfying claims arising out of injury to persons or property resulting from the release or escape of hazardous waste into the environment. Such financial responsibility may be established by one (1) or a combination of evidence of liability insurance, self-insurance, or other evidence of financial responsibility acceptable to the cabinet. The level of self-insurance shall not exceed ten percent (10%) of equity, and financial responsibility shall be maintained during the entire operation of the facility and until termination. The minimum liability coverage for sudden occurrences, exclusive of legal defense costs, for a storage, treatment, or disposal facility shall be one million dollars (\$1,000,000) per occurrence with an annual aggregate of two million dollars (\$2,000,000). The minimum liability coverage for nonsudden occurrences, exclusive of legal defense costs, for a hazardous waste facility involving land disposal shall be three million dollars (\$3,000,000) per occurrence with an annual aggregate of six million dollars (\$6,000,000). Combined coverage for sudden and nonsudden occurrences shall be no less than the combined totals herein set forth for separate coverage. The cabinet shall accept a demonstration of financial responsibility during the post-closure period of a facility for a lesser amount for sudden or non-sudden occurrences where it is shown that a lesser amount of financial responsibility will be adequate to provide compensation for third-party injury or property damage and corrective action, considering site and facility conditions and other site-specific factors. Financial responsibility in post-closure for sudden and non-sudden occurrences and corrective action may be demonstrated through a letter of credit, surety or other bond, corporate guarantee, trust fund, liability insurance, self-insurance, or combination of these or other methods as approved by the cabinet.
- (4) The cabinet shall promulgate regulations establishing minimal standards for closure, post-closure monitoring and maintenance, and termination of sites for the disposal of hazardous waste. Any person who obtains a disposal permit for hazardous waste shall be responsible for the post-closure monitoring and maintenance of the permitted facility for a minimum of thirty (30) years after closure of the facility. The permittee may apply to the cabinet for termination of the responsibility for post-closure monitoring and maintenance at any time during the thirty (30) year post-closure monitoring and maintenance period. Upon receipt of such application, the cabinet shall provide notice to the public and to the owner or operator and an opportunity for a hearing on the termination of the site. In this proceeding, the burden shall be on the applicant to prove by clear and convincing evidence that additional post-closure monitoring and maintenance is not necessary for adequate protection of public health or the environment. The cabinet shall determine either that post-closure monitoring and maintenance of the site is no longer required, in which case the applicant shall be relieved of such responsibility; or that additional post-closure monitoring and maintenance of the site as specified in a plan of operation is still required, in which case the cabinet may order appropriate remedial measures, impose restrictive covenants as to future use of the property involved, or otherwise condition termination as may be necessary for adequate protection of public health and the environment. The cabinet may require additional monitoring, site maintenance, or remedial measures consistent with KRS Chapter 224 any time after termination of the post-closure monitoring and maintenance of the permitted facility in the event that the cabinet determines such actions are necessary for the protection of human health and the environment.

- (5) In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where jurisdiction cannot be obtained with reasonable diligence in any state court or any federal court over an owner or operator likely to be insolvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility shall be provided under this section may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this subsection, such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.
- (6) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this section. Nothing in this subsection shall be construed to limit any other federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under Section 107 or 111 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 or other applicable law.
- (7) For the purpose of this subsection, the term guarantor means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this section.
- (8) Any hazardous waste treatment, storage, or disposal facility shall close in accordance with the permit and this chapter, if the site or facility has not been maintained in operational condition in conformance with this chapter, for any period of six (6) months or longer. The permittee shall be afforded an opportunity to be heard on the proposed termination of authorization to operate, and termination under this section shall not be required where the permittee demonstrates that steps have been taken to bring the facility, within a reasonable time not to exceed ninety (90) days, into full operational status in accordance with this chapter and applicable regulations. Within ninety (90) days, the cabinet shall review existing hazardous waste treatment, storage, or disposal permits to determine compliance with this section.

➔Section 48. KRS 350.054 is amended to read as follows:

- (1) There is established a special fund to be known as the "Illegal Mining and Conveyance Reclamation Fund" which shall be under the control of the Energy and Environment Cabinet.
- (2) The fund shall consist of all moneys from the sale or forfeiture of all instrumentalities used in violation of KRS 350.057(3) or 350.060(1) ~~as provided for in KRS 350.053~~.
- (3) Moneys in the fund may be used for the following purposes:
 - (a) To reclaim lands mined without a permit or authorization, as required by KRS 350.057 or 350.060(1), and not eligible for the abandoned mine lands reclamation fund; and
 - (b) To defray all expenses associated with the seizure, storing, and sale of forfeited property ~~pursuant to KRS 350.053~~.
- (4) Moneys contained in the illegal mining and conveyance reclamation fund shall be deemed a trust and agency account and shall not lapse.
- (5) The cabinet shall have access to and control of the moneys held in the illegal mining and conveyance reclamation fund, but shall expend the moneys only for the purposes set forth in subsection (3) of this section.

➔Section 49. The following KRS sections are repealed:

151.232 Participation in development of administrative regulations.

154.47-100 Definitions for KRS 154.47-105 to 154.47-120.

154.47-105 Legislative findings.

154.47-110 Kentucky Forest Products Council.

154.47-120 Purposes of council.

224.1-100 Environmental Quality Commission: Membership, terms, compensation, officers, meetings.

224.1-105 Eligibility limitations on commission membership.

- 224.1-110 Powers and duties of commission.
- 224.1-115 Recommendation of adoption or rejection of proposals -- Adoption upon recommendation of rejection, statement of reason.
- 224.1-200 Environmental trust fund created.
- 224.1-205 Uses for environmental trust fund.
- 224.1-210 Environmental Board.
- 224.1-215 Powers and duties of Environmental Board.
- 224.1-220 Limitation on use of fund.
- 224.10-660 Kentucky Recycling and Marketing Assistance Program -- Advisory committee -- Report.
- 224.30-050 Noise emission prohibitions.
- 224.30-100 Findings and policy.
- 224.30-105 Definitions for KRS 224.30-100 to 224.30-190.
- 224.30-110 Agency cooperation and compliance with control requirements -- Review of standards or regulations -- Report to secretary.
- 224.30-115 Development and maintenance of comprehensive state-wide program of noise regulation.
- 224.30-120 Powers of secretary.
- 224.30-125 Certification of products -- Purchase or lease for state government -- Periodic testing -- Procedure when level exceeds that on which certification is based.
- 224.30-130 Variances.
- 224.30-135 Conditions imposed on granting variances -- Time limit -- Extension.
- 224.30-140 Variance petition -- Notice -- Hearing.
- 224.30-145 Annual report.
- 224.30-150 Standards -- Enforcement jurisdiction.
- 224.30-155 Applicability of KRS 224.10-420, 224.10-440 and 224.10-470.
- 224.30-160 Remedies additional to those available at law.
- 224.30-165 Prohibitions.
- 224.30-170 Exceptions.
- 224.30-180 Noise control plan -- Contents.
- 224.30-185 Adoption and enforcement of ordinances to implement plan.
- 224.30-195 Citation of KRS 224.30-100 to 224.30-190.
- 224.43-070 Solid Waste Management Legislative Task Force -- Composition -- Duties.
- 224.43-080 Newsprint Recycling Task Force -- Composition -- Duties.
- 224.43-320 Inspectors for municipal solid waste landfills -- Exception.
- 224.43-710 Technical and financial assistance for developing plans.
- 224.43-720 Amount of assistance.
- 224.43-730 Applications for assistance.
- 224.46-810 Definitions.
- 224.46-820 Kentucky Regional Integrated Waste Treatment and Disposal Facility Siting Board.
- 224.46-825 Powers and duties of board.

- 224.46-830 Certificate of environmental safety and public necessity -- Application -- Factors considered -- Presentation of findings -- Appeals.
- 224.46-840 Site requirements -- Qualified hazardous waste.
- 224.46-850 Establishment of plan for industrial park component of site.
- 224.46-860 Operational report.
- 224.46-870 Planning for future needs.
- 224.50-020 Advisory committee for agricultural chemical and chemical container disposal program.
- 350.035 Department for Natural Resources -- Divisions -- Appointment of special investigations officers.
- 350.052 Powers, qualifications, and training of special investigations officers.
- 350.053 Seizure and sale of equipment -- Rights of owner or lien holder.
- 350.260 Small Coal Operators Advisory Council.
- 350.470 Review of regulations.
- 350.715 Pool administrator.
- 351.105 Mining Board -- Membership -- Hearings -- Administrative regulations.
- 351.1055 Mine Equipment Review Panel -- Membership -- Recommendations.
- 352.550 Coercion of trade of miners prohibited.

Signed by Governor March 27, 2017.