

CHAPTER 138

(SB 226)

AN ACT relating to environmental permitting.

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

➔SECTION 1. A NEW SECTION OF SUBCHAPTER 16 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

- (1) *When issuing permits under Section 3 of this Act for discharges into waters designated as outstanding state resource waters due to the water's support of federally threatened and endangered species of aquatic organisms, the cabinet shall, to the extent allowable under this chapter and the federal Water Pollution Control Act, 33 U.S.C. sec. 1251 et seq.:*
- (a) *Presume that water quality will be maintained and protected if the applicant complies with the technology-based effluent limitations for the point source category for the industry in which the permit applicant operates or with any species-specific protection measures imposed on the applicant's operation by any other state or federal agency in any other permit, approval, or review applicable to the operation for which the permit under Section 3 of this Act is sought;*
 - (b) *In determining whether lowering of water quality or habitat modification will have an adverse effect on the threatened or endangered species that the water supports, give substantial weight to any evidence submitted by the permit applicant indicating that discharges from similar operations have not caused a material decrease in the overall number of the same or similar threatened or endangered species of aquatic organisms;*
 - (c) *Not impose any conditions that are more stringent than those required by the United States Fish and Wildlife Service to protect any particular threatened or endangered species of aquatic organism or aquatic habitat with respect to the discharge or operation; and*
 - (d) *In the absence of any restrictions, conditions, or limitations imposed on the discharge by the United States Fish and Wildlife Service, presume that compliance with numeric water quality standards applicable to the discharge shall constitute compliance with narrative water quality standards applicable to outstanding state resource waters that support federally recognized threatened or endangered species.*
- (2) *The cabinet shall clearly document its compliance with the requirements of subsection (1) of this section in the fact sheet for the permit. Notwithstanding any provision of law to the contrary, if the cabinet fails to clearly and adequately document its compliance with the requirements of subsection (1) of this section, any term, limitation, condition, or other requirement imposed on the permit based on a narrative water quality standard for outstanding state resource waters shall be automatically stayed upon the filing of a petition for administrative hearing related to the permit by the applicant.*

➔Section 2. KRS 224.10-225 is amended to read as follows:

- (1) The secretary of the Energy and Environment Cabinet shall facilitate the permitting of:
- (a) Coal-fired electric generation plants or industrial energy facilities in the Commonwealth; *and*
 - (b) *Upon request of the applicant, surface coal mining and reclamation operations in the Commonwealth;*

by developing procedures for one (1) stop shopping for environmental permits.

- (2) Upon request by an applicant for environmental permits for an industrial energy facility *or a surface coal mining and reclamation operation*, the secretary, in consultation with the applicant, shall establish specific time periods for actions to be taken in the consideration of its permit applications. The time periods established shall not exceed those adopted by administrative regulations promulgated pursuant to KRS 224.10-220. *Notwithstanding KRS 224.10-420(2), failure by the cabinet to adhere to the time periods established pursuant to this section or established by administrative regulations promulgated pursuant to KRS 224.10-220 shall constitute the making of a final determination of the cabinet, and the applicant, at its election, may:*

- (a) *Initiate an action for mandamus, declaratory judgment, or other specific relief in the Circuit Court for the county in which the surface coal mining and reclamation operation is located; or*
 - (b) *Initiate an administrative hearing under KRS 224.10-420(2).*
- (3) *As used in this section, "surface coal mining and reclamation operations" has the same meaning as in KRS 350.010.*

➔Section 3. KRS 224.16-050 is amended to read as follows:

- (1) The cabinet may issue federal permits pursuant to 33 U.S.C. sec. 1342(b) of the federal Water Pollution Control Act, ~~{33 U.S.C. sec. {secs-} 1251 et seq., }~~ subject to the conditions imposed in 33 U.S.C. secs. 1342(b) and 1342(d). The cabinet may issue federal permits pursuant to 33 U.S.C. sec. 1344(e) and (g) of the federal Water Pollution Control Act, 33 U.S.C. ~~sec. {secs-} 1251 et seq.,~~ subject to the conditions imposed in 33 U.S.C. sec. 1344(h), (i), and (j). Any exemptions granted in the issuance of NPDES permits shall be pursuant to 33 U.S.C. secs. 1311, 1312, and 1326(a). The cabinet shall report to the standing committees of jurisdiction over environmental protection, and appropriations and revenue, no later than January 1, 2006, on the costs, personnel requirements, and any statutory or regulatory changes needed to support state assumption of the permitting program under 33 U.S.C. ~~sec. 1344(e) and (g),~~ and the anticipated benefits in permit streamlining and environmental quality from state administration of the program.
- (2)
 - (a) The cabinet *shall make certification determinations* ~~{may certify}~~ pursuant to 33 U.S.C. sec. 1341 *as to whether* ~~{that}~~ applicants for a federal permit for the construction or operation of facilities which may result in a discharge into the waters of the Commonwealth will comply with the applicable provisions of the federal Water Pollution Control Act, ~~{33 U.S.C. sec. {secs-} 1251 et seq. }~~
 - (b) *Within thirty (30) calendar days of receipt of an application for certification under paragraph (a) of this subsection, the cabinet shall notify the applicant in writing that the application is complete or that the cabinet requires additional information to process the application. If the cabinet determines that additional information is necessary to process the application, the notice provided pursuant to this paragraph shall clearly set forth the necessary additional information, which the applicant shall provide within thirty (30) calendar days of receiving the notice of incompleteness.*
 - (c) *Unless a longer period of time is requested by the applicant, the cabinet shall make a final determination on whether to issue the certification or deny the application within sixty (60) calendar days of notifying the applicant that the application is complete pursuant to paragraph (b) of this subsection.*
 - (d) *If the cabinet does not make a final determination within sixty (60) calendar days of a notification of completeness in accordance with paragraph (c) of this subsection, the cabinet shall be considered to have waived certification requirements by the Commonwealth, unless the applicant has voluntarily agreed in writing to a longer review period not to exceed one (1) year from the cabinet's receipt of the initial application.*
- (3) *The certification provided under subsection (2) of this section shall be limited in scope to water quality impacts from the discharge only and shall not include other limitations or constitute a review of the proposed activity as a whole* ~~{The cabinet shall not undertake either of the actions authorized in subsections (1) or (2) of this section unless the Governor of the Commonwealth has determined that such activity will be in the best interests of the environment and the people of the Commonwealth}.~~
- (4) The cabinet shall not impose under any permit issued pursuant to this section any effluent limitation, monitoring requirement, or other condition which is more stringent than the effluent limitation, monitoring requirement, or other condition which would have been applicable under federal regulation if the permit were issued by the federal government. *The cabinet shall not postpone or delay the review of, or condition, delay, or refuse the issuance of, any permit under 33 U.S.C. sec. 1342(b) of the Federal Water Pollution Control Act on the applicant's need for or receipt of any other federal, state, or local permit, certification, license, authorization, or other approval.*
- (5) Nonprofit organizations which have been qualified under Section 501(c)(3) of the Internal Revenue Code and which operate their own treatment facilities and which are designated for capacities less than ten thousand (10,000) gallons per day shall be charged a fee no greater than fifty dollars (\$50) by the cabinet to process a construction permit, nor a fee greater than twenty dollars (\$20) per year for an operating permit for one (1) facility. These fees shall in no case be higher than the fees charged by the cabinet to process permit applications for comparable privately owned facilities. This subsection shall not apply to any school or

waterworks owned by a water district, water association, or municipality and established pursuant to KRS Chapters 74 or 106.

- (6) The following activities do not require a permit issued under 33 U.S.C. sec. 1344. The discharge of dredged or fill material:
 - (a) From normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor draining, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices;
 - (b) For the purpose of maintenance, including emergency reconstruction of recently damaged parts of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures;
 - (c) For the purpose of construction or maintenance of farm or stock ponds, irrigation ditches, or the maintenance of drainage ditches;
 - (d) For the purpose of construction of temporary sedimentation basins on a construction site which does not include placement of fill material into the navigable waters; or
 - (e) For the purpose of construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment, where the roads are constructed and maintained, in accordance with best management practices, to ensure that flow and circulation patterns and chemical and biological characteristics of the navigable waters are not impaired, that the reach of the navigable waters is not reduced, and that any adverse effect on the aquatic environment will be minimized.
- (7) Prior to assuming delegated authority from the United States Environmental Protection Agency to administer 33 U.S.C. sec. 1344(e) and (g), the cabinet shall enter into a memorandum of agreement with the United States Department of Agriculture (USDA) regarding wetlands delineation on agricultural lands or lands owned or operated by a USDA program participant. The cabinet shall give the same deference to wetlands delineations made by USDA as would have been given by a federal agency administering 33 U.S.C. sec. 1344(e) and (g).
- (8) The cabinet may establish by regulation a fee for processing permit applications under 33 U.S.C. sec. 1344.

Veto Overridden March 29, 2023.