

401 KAR 5:060. KPDES application requirements.

RELATES TO: KRS 224.1-010, 224.1-400, 224.70-100, 224.70-120, 224.99-010

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 224.16-050, 224.70-110, 40 C.F.R. 110.6, 117.21, 122, 123.35, 136, 261, 262.34, 302.6, 355, Chapter I, Subchapter N, Parts 401-471, 33 U.S.C. 1251-1387, 42 U.S.C. 300h, 6901-7000, 11023

CERTIFICATION STATEMENT:

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the cabinet to provide for the prevention, abatement, and control of water pollution, and authorizes the cabinet to issue, continue in effect, revoke, modify, suspend, or deny permits to discharge into any waters of the Commonwealth. KRS 224.16-050 authorizes the cabinet to issue federal permits pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387. This administrative regulation establishes the application requirements for a KPDES permit and contains additional requirements for general and specific categories of dischargers.

Section 1. Definitions. Except as established in 401 KAR 5:002, definitions established in 40 C.F.R. 122.2 shall apply for the interpretation of the federal regulations cited within this administrative regulation.

Section 2. Applying for a KPDES Permit.

(1) Application requirements. A person who is required to have a permit, including a new applicant or permittee with an expiring permit, shall complete, sign, and submit an application to the cabinet as established in this administrative regulation and 401 KAR 5:055.

(2) Duty to apply.

(a)

1. A person who discharges or proposes to discharge pollutants and who does not have an effective permit shall submit a complete application to the cabinet in accordance with this section, unless excluded as established in clauses a. through c. of this subparagraph.

a. A person covered pursuant to general permits as established in 40 C.F.R. 122.28.

b. A person discharging to a POTW as established in 40 C.F.R. 122.3 unless the cabinet requires an individual permit pursuant to 40 C.F.R. 122.44(m).

c. A user of a privately owned treatment works, unless the cabinet requires an individual permit pursuant to 40 C.F.R. 122.44(m).

2. The application shall include a BMP program if necessary pursuant to 40 C.F.R. 122.44(k).

(b) An applicant shall submit the appropriate application form, as established in Table 1 of this paragraph.

Table 1

Discharge Type	Required Application Form
POTW	1 and A
CAFO	1 and B
Aquatic Animal Production Facility	1 and B
Manufacturing, commercial, mining and silvicultural discharges with process water	1 and C

Manufacturing, commercial, mining and silvicultural discharges with nonprocess wastewater only	1 and SC
Industrial stormwater point source discharges	1 and F

(3) Additional requirements for KPDES applications shall be as established in 40 C.F.R. 122.21 and the modifications, exceptions, and additions of Section 11 of this administrative regulation.

(4) Continuation of expiring permits.

(a) The conditions of an expired permit shall continue in force until the effective date of a new permit if:

1. The permittee has submitted a timely and complete application; and
2. The cabinet, through no fault of the permittee, does not issue a new permit with an effective date pursuant to 401 KAR 5:075, Section 11, on or before the expiration date of the previous permit.

(b) Effect. A permit continued pursuant to this subsection shall remain fully effective and enforceable until the effective date of a new permit.

(c) Enforcement. If the permittee is not in compliance with the conditions of the expiring or expired permit the cabinet shall:

1. Initiate enforcement action based upon the permit that has been continued;
2. Issue a notice of intent to deny the new permit pursuant to 401 KAR 5:075, Section 3;
3. Issue a new permit pursuant to 401 KAR 5:075 with appropriate conditions to ensure that the permit is protective of water quality; or
4. Take action authorized by KRS 224 and 401 KAR Chapter 5.

Section 3. Service of Process.

(1) Each applicant and permittee shall provide the cabinet with an address for receipt of a legal document for service of process.

(2) The last address provided to the cabinet pursuant to this provision shall be the address at which the cabinet shall tender a legal notice.

Section 4. Signatories to Permit Applications and Reports. Signatories to permit applications and reports shall be as established in 40 C.F.R. 122.22.

Section 5. Concentrated Animal Feeding Operations.

(1) Additional permit application and special KPDES program requirements shall be as established in 40 C.F.R. 122.23.

(2) The incorporation of the terms of a CAFO's nutrient management plan into the terms and conditions of a general permit if a CAFO obtains coverage under a general permit in accordance with 40 C.F.R. 122.23(h) and 40 C.F.R. 122.28 is not a cause for permit modification pursuant to the requirements of 401 KAR 5:050, Section 7 or 40 C.F.R. 122.62.

(3) The incorporation of changes to the terms of a CAFO's nutrient management plan that have been revised in accordance with the requirements established in 40 C.F.R. 122.42(e)

(6) shall be a minor modification as established in 40 C.F.R. 122.63.

Section 6. Concentrated Aquatic Animal Production Facilities. A concentrated aquatic animal production facility shall be a point source subject to the KPDES permit program and shall be subject to permit application and special KPDES program requirements established in 40 C.F.R. 122.24.

Section 7. Aquaculture Projects. A discharge into an aquaculture project shall be a point source subject to the KPDES permit program and the requirements established in 40 C.F.R. 122.25.

Section 8. Stormwater Discharges. A point source discharge of stormwater shall be subject to the KPDES permit program and the requirements established in 40 C.F.R. 122.26.

Section 9. Silvicultural Activities. A silvicultural point source shall be a point source subject to the KPDES permit program and the requirements established in 40 C.F.R. 122.27.

Section 10. Regulated Small MS4.

- (1) The objective of regulating a small MS4 shall be as established in 40 C.F.R. 122.30.
- (2) The operator of a small MS4 shall be subject to regulation as established in 40 C.F.R. 122.32.
- (3) The application requirements for a small MS4 shall be as established in 40 C.F.R. 122.33.
- (4) The permit for a small MS4 shall contain conditions consistent with the requirements established in 40 C.F.R. 122.34.
- (5) A small MS4 may share responsibilities to implement minimum control measures as established in 40 C.F.R. 122.35.

Section 11. Substitutions, Exceptions, and Additions to Cited Federal Regulations.

- (1) "Waters of the Commonwealth" shall be substituted for "Waters of the United States" in the federal regulations cited in this administrative regulation.
- (2) "Cabinet" shall be substituted for "Director" in the federal regulations cited in this administrative regulation.
- (3) "KPDES" shall be substituted for "NPDES" in the federal regulations cited in this administrative regulation.
- (4) The forms required in Section 2(2)(b) of this administrative regulation shall be substituted for the federal forms established in 40 C.F.R. 122.21.
- (5) The conditions for Cooling Water Phase II shall be as established in 40 C.F.R. 122.21(r)(1)(ii).
- (6) The special procedures related to thermal variances cited as 40 C.F.R. Section 124.65 in 40 C.F.R. 122.21(m)(6) shall be modified to 40 C.F.R. 124.62.

Section 12. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) KPDES Form 1, DEP 7032, March 2018;
 - (b) KPDES Form A, DEP 7032A, March 2018;
 - (c) KPDES Form B, DEP 7032B, March 2018;
 - (d) KPDES Form C, DEP 7032C, March 2018;
 - (e) KPDES Form SC, DEP 7032SC, March 2018;
 - (f) KPDES Form F, DEP 7032F, March 2018; and
 - (g) KPDES Form NE, DEP 7032NE, March 2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained through the Division of Water Web site at <http://water.ky.gov>.

(401 KAR 005:060. 9 Ky.R. 858; 1119; 10 Ky.R. 25; eff. 6-1-1983; 11 Ky.R. 756; eff. 1-7-1985; 12 Ky.R. 528; eff. 12-10-1985; 20 Ky.R. 3246; 21 Ky.R. 396; eff. 8-24-1994; 28 Ky.R. 2686; 29 Ky.R. 1053; 1566; eff. 12-18-2002; TAm eff. 8-9-2007; 35 Ky.R. 2526; eff. 9-25-2009; 39 Ky.R. 268; 992; eff. 3-8-2013; TAm eff. 7-8-2016; 44 Ky.R. 2623; eff. 11-1-2018; Crt to Am, filing deadline 4-28-2027.)