

**224.16-055 Guidelines for issuance of permits to discharge into waters designated as outstanding state resource waters.**

- (1) When issuing permits under KRS 224.16-050 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 KRS 224.16-050 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.

**Effective:** June 29, 2023

**History:** Created 2023 Ky. Acts ch. 138, sec. 1, effective June 29, 2023.