

**224.16-050 Issuance of federal permits by cabinet -- Timelines for determination -- Activities not requiring permit -- Wetlands delineation -- Application fee.**

- (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. 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. 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 pursuant to 33 U.S.C. sec. 1341 as to whether 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. 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.
- (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 Chapter 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.

**Effective:** June 29, 2023

**History:** Amended 2023 Ky. Acts ch. 138, sec. 3, effective June 29, 2023. -- Amended 2005 Ky. Acts ch. 174, sec. 1, effective June 20, 2005. -- Amended 1990 Ky. Acts ch. 412, sec. 2, effective July 13, 1990. -- Amended 1978 Ky. Acts ch. 257 Ky. Acts ch. 2, effective June 17, 1978. -- Created 1974 Ky. Acts ch. 355, sec. 3, effective June 21, 1974.

**Formerly codified as** KRS 224.034.