

1 AN ACT relating to privately owned small wastewater treatment plants.

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

3 ➔SECTION 1. A NEW SECTION OF SUBCHAPTER 73 OF KRS CHAPTER  
4 224 IS CREATED TO READ AS FOLLOWS:

5 *As used in Sections 1 to 3 of this Act:*

6 *(1) "Privately owned small wastewater treatment plant" or "plant" means all or any*  
7 *part of a sewage treatment facility, including the collection system that:*

8 *(a) Is designed to intercept, transport, and treat sewage before discharging it*  
9 *into the environment;*

10 *(b) Is not operated by a local government, special district, or governmental*  
11 *entity, including but not limited to a city, county, charter county, urban-*  
12 *county government, consolidated local government, unified local*  
13 *government, or board or commission operating under KRS Chapters 65, 67,*  
14 *74, 76, or 220;*

15 *(c) Is not an industrial wastewater treatment plant;*

16 *(d) Is not a system designed to serve an individual household;*

17 *(e) Is not an agricultural operation; and*

18 *(f) Serves a localized customer base such as neighborhoods, developments,*  
19 *apartment or condominium complexes, businesses, or manufactured*  
20 *housing or mobile home parks; and*

21 *(2) "Sewage" means the water-carried human or animal wastes from residences,*  
22 *buildings, or other places, together with industrial wastes or underground,*  
23 *surface, storm or other water as may be present.*

24 ➔SECTION 2. A NEW SECTION OF SUBCHAPTER 73 OF KRS CHAPTER  
25 224 IS CREATED TO READ AS FOLLOWS:

26 *The cabinet shall promulgate administrative regulations in accordance with KRS*  
27 *Chapter 13A regarding the issuance or the renewal of a discharge permit under KRS*

1 224.10-100 to an owner of a privately owned small wastewater treatment plant that  
 2 require a plant's owner to:

3 (1) Obtain and maintain a contract for insurance, or a financial instrument such as  
 4 a letter of credit, for:

5 (a) Fire and extended coverage in an amount deemed sufficient by the cabinet  
 6 to fully replace the plant or otherwise restore service to the customers served  
 7 by the plant in the event the plant becomes nonfunctional due to risks such  
 8 as fire or other natural disasters; and

9 (b) Commercial general liability coverage and products and completed  
 10 operations coverage in an amount deemed sufficient by the cabinet to  
 11 address potential general liabilities or products and completed operations  
 12 liabilities;

13 (2) Implement an asset management plan, the requirements of which shall be  
 14 developed by the cabinet using nationally known or recognized best practices,  
 15 methodologies, and guidelines;

16 (3) Maintain adequate revenue to ensure continuity of service and the ability of the  
 17 owner to:

18 (a) Operate and maintain the plant in a manner to meet all applicable state and  
 19 federal laws during operation; and

20 (b) Implement the asset management plan designated for the plant; and

21 (4) Conduct a structural analysis of the plant, as necessary.

22 ➔SECTION 3. A NEW SECTION OF SUBCHAPTER 73 OF KRS CHAPTER  
 23 224 IS CREATED TO READ AS FOLLOWS:

24 (1) The cabinet may seek to have a receiver appointed to assume the management  
 25 and operation of a privately owned small wastewater treatment plant if the plant:

26 (a) Presents a threat or likely threat to the public health or the environment;

27 (b) Is in substantial and recurring noncompliance with its discharge permit as

- 1           issued by the cabinet; or
- 2           (c) The owner is unable or unwilling to operate or to provide for the proper
- 3           operation of the plant.
- 4           (2) If the cabinet, after following the procedures and conducting a hearing in
- 5           accordance with KRS 224.10-410 or 224.10-420 and the administrative
- 6           regulations promulgated thereunder, enters an order in which it finds that a plant
- 7           meets any of the conditions of subsection (1) of this section, and after notification
- 8           to the Public Service Commission if the plant is a utility as defined in KRS
- 9           278.010(3)(f), the cabinet may bring an action in the Franklin Circuit Court for
- 10           an order attaching the assets of the plant and placing those assets under the sole
- 11           control and responsibility of a receiver.
- 12           (3) Within twenty (20) days after commencing an action in Franklin Circuit Court,
- 13           the cabinet shall file a certified copy of the record of the administrative
- 14           proceeding in which the secretary of the cabinet entered his or her findings.
- 15           (4) During the pendency of any receivership, the receiver may bring or defend any
- 16           cause of action on behalf of the owner of the plant as the court may authorize,
- 17           including an action to raise rates or institute surcharges as necessary to properly
- 18           operate, maintain, restore, and rehabilitate the plant and to pay the costs, fees,
- 19           and expenses of the receiver.
- 20           (5) The receiver shall control and manage the assets and operations of the plant until
- 21           the Franklin Circuit Court, after reasonable notice and hearing, orders the
- 22           receiver to return control of those assets to the plant's owner or to liquidate and
- 23           transfer those assets as provided by law.
- 24           (6) (a) Notwithstanding subsection (2) of this section, the cabinet, after notification
- 25           to the Public Service Commission if the plant is a utility as defined in KRS
- 26           278.010(3)(f), may petition the Franklin Circuit Court to appoint a
- 27           temporary receiver to operate and manage the assets of the plant meeting

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the conditions set out in subsection (1) of this section.

(b) After notice to the owner of the plant, and after notification to the Public Service Commission if the plant is a utility as defined in KRS 278.010(3)(f), the court may grant a petition for the appointment of a temporary receiver, on terms and conditions as it deems appropriate, upon a showing by a preponderance of the evidence:

1. That the plant is an immediate threat to the public health, safety, or the environment;
2. There is an immediate threat to the continued availability of service to the customers served by the plant; and
3. That the delay required for the cabinet to follow the procedures and conduct a hearing in accordance with subsection (2) of this section would place the public health or safety, the environment, or continued wastewater treatment service at unnecessary risk.