

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 4 of this Act:*

6 *(1) "Sewage" means water-carried human-generated nonindustrial waste; and*

7 *(2) "Small wastewater treatment plant" or "plant" means all or any part of a sewage*
8 *treatment facility that:*

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

11 *(b) Is privately owned and not run by a local government, special district, or*
12 *governmental entity, including but not limited to a city, county, charter*
13 *county, urban-county government, consolidated local government, unified*
14 *local government, or board or commission operating under KRS Chapter*
15 *65, 67, 74, 76, or 220; and*

16 *(c) Serves a localized customer base such as neighborhoods, developments,*
17 *apartment or condominium complexes, or manufactured or mobile home*
18 *parks.*

19 ➔SECTION 2. A NEW SECTION OF SUBCHAPTER 73 OF KRS CHAPTER
20 224 IS CREATED TO READ AS FOLLOWS:

21 *(1) The cabinet may, as a condition of issuing discharge permits under KRS 224.10-*
22 *100 to a small wastewater treatment plant, require a structural analysis of the*
23 *plant. An analysis may be required to be conducted, as specified in the permit,*
24 *one (1) time, or on a periodic basis, occurring one (1) or more times for the*
25 *duration of the validity of the discharge permit.*

26 *(2) Any structural analysis of a plant shall be designed to analyze and assess the*
27 *physical condition of the plant and its appurtenant facilities in terms of the*

1 plant's operation pursuant to its design specifications at present and in
2 consideration of its future operation. The analysis may also take into
3 consideration maintenance performed or not performed on the plant or its
4 appurtenant facilities.

5 (3) If the cabinet chooses to require a structural analysis pursuant to this section, it
6 shall implement this requirement through the promulgation of an administrative
7 regulation in accordance with KRS Chapter 13A.

8 ➔SECTION 3. A NEW SECTION OF SUBCHAPTER 73 OF KRS CHAPTER
9 224 IS CREATED TO READ AS FOLLOWS:

10 (1) When issuing discharge permits under KRS 224.10-100 to a small wastewater
11 treatment plant, the cabinet may require the plant's owner to secure the following
12 financial or performance measures in a manner acceptable to the cabinet:

13 (a) An insurance policy or other financial instrument in an amount deemed
14 sufficient by the cabinet to fully replace the plant or otherwise restore
15 service to the customers the plant serves in the event of a catastrophic
16 failure of the plant;

17 (b) For new plants receiving a discharge permit for the first time, a surety bond
18 or other instrument or reasonable guaranty that the owner shall operate the
19 plant in a reasonable and reliable manner for a period of at least three (3)
20 years. The surety bond or other instrument or reasonable guaranty shall be
21 in an amount sufficient to ensure the full and faithful performance by the
22 owner or his or her successors of the obligations and requirements of
23 applicable state and federal laws. The cabinet may waive the requirement of
24 a surety bond or other instrument or reasonable guaranty if, in the cabinet's
25 judgment, the owner has sufficient assets to ensure the continuity of the
26 plant's service; and

27 (c) For all plants, whether or not receiving a discharge permit for the first time:

- 1 1. Use of an asset management plan, or capacity, management,
 2 operation and maintenance measures. In implementing this
 3 requirement, the cabinet shall use nationally known or recognized best
 4 practices methodologies or guidelines; and
- 5 2. The implementation of financial assurance measures to ensure that
 6 the plant owner has sufficient financial resources to:
- 7 a. Operate the plant in a manner to meet all applicable state and
 8 federal laws at present and through the conclusion of its
 9 operational lifetime; and
- 10 b. Provide for the maintenance of the plant to provide continuous
 11 service to its users at present and to the conclusion of its
 12 operational lifetime.
- 13 (2) The cabinet shall implement the requirements of this section by promulgation of
 14 an administrative regulation in accordance with KRS Chapter 13A.
- 15 ➔SECTION 4. A NEW SECTION OF SUBCHAPTER 73 OF KRS CHAPTER
 16 224 IS CREATED TO READ AS FOLLOWS:
- 17 (1) If a small wastewater treatment plant:
- 18 (a) Presents a threat or likely threat to the public health or the environment; or
 19 (b) Is in noncompliance with its discharge permit as issued by the cabinet;
 20 then the cabinet may seek to have a permanent or temporary receiver, custodian,
 21 or fiduciary appointed to assume the management and operation of the plant.
- 22 (2) If the cabinet, after following the procedures and conducting a hearing in
 23 accordance with KRS 224.10-410, 224.10-420, 224.10-430, 224.10-440, and
 24 224.10-470, enters an order in which it finds that a small wastewater treatment
 25 plant presents a threat or likely threat to the public health or the environment or
 26 is in noncompliance with its discharge permit as issued by the cabinet, the
 27 cabinet may bring an action in the Franklin Circuit Court for an order attaching

1 the assets of the plant and placing those assets under the sole control and
2 responsibility of a receiver.

3 (3) Within twenty (20) days after commencing an action in Franklin Circuit Court,
4 the cabinet shall file a certified copy of the record of the administrative
5 proceeding in which the commission entered its finding that the small wastewater
6 treatment plant poses a threat to the public health or the environment or is in
7 noncompliance with its discharge permit as issued by the cabinet.

8 (4) Any receiver appointed by the court shall file a bond in an amount fixed by the
9 court. The receiver shall operate the small wastewater treatment plant to preserve
10 its assets, to restore or maintain a reasonable level of service, and to serve the best
11 interests of its customers.

12 (5) During the pendency of any receivership, the receiver may bring or defend any
13 cause of action on behalf of the small wastewater treatment plant and generally
14 perform acts on behalf of the plant as the court may authorize.

15 (6) The receiver shall control and manage the assets and operations of the small
16 wastewater treatment plant until the Franklin Circuit Court, after reasonable
17 notice and hearing, orders the receiver to return control of those assets to the
18 plant or to liquidate those assets as provided by law.

19 (7) (a) Notwithstanding subsection (2) of this section, the cabinet may petition the
20 Franklin Circuit Court to appoint a temporary receiver to operate and
21 manage the assets of a small wastewater treatment plant meeting the
22 conditions set out in subsection (1) of this section.

23 (b) After notice to the small wastewater treatment plant and a hearing, the
24 court may grant a petition, on terms and conditions as it deems appropriate,
25 upon a showing by a preponderance of the evidence that:

26 1. The plant is an immediate threat to the public health or safety or the
27 continued availability of service to the plant's customers, or is

1 otherwise in noncompliance with its discharge permit as issued by the
2 cabinet; and
3 2. The delay required for the cabinet to follow the procedures and
4 conduct a hearing in accordance with KRS 224.10-410, 224.10-420,
5 224.10-430, 224.10-440, and 224.10-470 would place public health or
6 safety or continued wastewater treatment service at unnecessary risk.
7 (c) Sixty (60) days after its entry, the order of temporary receivership shall
8 terminate and control and responsibility for the assets and operations of the
9 small wastewater treatment plant shall revert to owner of the plant without
10 further action of the court, unless the cabinet brings an action under
11 subsection (2) of this section.