

1 AN ACT relating to water resources.

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

3 ➔Section 1. KRS 151.100 is amended to read as follows:

4 As used in KRS 151.110 to 151.460 and 151.990~~[, the words listed herein shall have the~~
5 ~~following respective meanings, unless another or different meaning or intent shall be~~
6 ~~clearly indicated by the context]:~~

- 7 (1) ~~{The word }~~"Authority" ***means***~~[shall mean]~~ the Water Resources Authority of
8 Kentucky;
- 9 (2) ~~{The word }~~"Cabinet" ***means***~~[shall mean]~~ the Energy and Environment Cabinet;
- 10 (3) ~~{The word }~~"Stream" or "watercourse" ***means***~~[shall mean]~~ any river, creek or
11 channel, having well defined banks, in which water flows for substantial periods of
12 the year to drain a given area, or any lake or other body of water in the
13 Commonwealth;
- 14 (4) ~~{The word }~~"Diffused surface water" ***means***~~[shall mean]~~ that water which comes
15 from falling rain or melting snow or ice, and which is diffused over the surface of
16 the ground, or which temporarily flows vagrantly upon or over the surface of the
17 ground as the natural elevations and depressions of the surface of the earth may
18 guide it, until such water reaches a stream or watercourse;
- 19 (5) ***"Groundwater"***~~{The word "Ground water" or "subterranean water"}~~ ***means***~~[shall~~
20 ~~mean]~~ all water which fills the natural openings under the earth's surface, including
21 all underground watercourses, artesian basins, reservoirs, lakes, and other bodies of
22 water below the earth's surface;
- 23 (6) ~~{The word }~~"Floodway" ***means the channel of a river, stream, or other***
24 ***watercourse and the adjacent land areas that must be reserved in order to***
25 ***discharge the base flood without cumulatively increasing the water surface***
26 ***elevation more than a designated height***~~[shall mean that area of a stream or~~
27 ~~watercourse necessary to carry off flood water as determined by the secretary];~~

- 1 (7) ~~{The word }~~"Floodplain" ***means***~~{shall mean}~~ the area in a watershed that is
2 ***susceptible to being inundated by floodwaters from any source***~~{subject to~~
3 ~~inundation}~~;
- 4 (8) ~~{The word }~~"Watershed" ***means***~~{shall mean}~~ all the area from which all drainage
5 passes a given point downstream;
- 6 (9) ~~{The word }~~"Domestic use" ***means***~~{shall mean}~~ the use of water for ordinary
7 household purposes, and drinking water for poultry, livestock, and domestic
8 animals;
- 9 (10) ~~{The word }~~"Water resources project" or "project" ***means***~~{shall mean}~~ any structural
10 or nonstructural study, plan, design, construction, development, improvement, or
11 any other activity including programs for management, intended to conserve and
12 develop the water resources of the Commonwealth and shall include all aspects of
13 water supply, flood damage abatement, navigation, water-related recreation, and
14 land conservation facilities and measures;
- 15 (11) ~~{The word }~~"Withdraw" or "withdrawal" of water ***means***~~{shall mean}~~ the actual
16 removal or taking of water from any stream, watercourse, or other body of public
17 water;
- 18 (12) ~~{The word }~~"Dam" ***means***~~{shall mean}~~ any artificial barrier, including appurtenant
19 works, which does or can impound or divert water, and which either:
- 20 (a) Is or will be twenty-five (25) feet or more in height from the natural bed of the
21 stream or watercourse at the downstream toe of the barrier, as determined by
22 the cabinet; or
- 23 (b) Has or will have an impounding capacity at maximum water storage elevation
24 of fifty (50) acre-feet or more;
- 25 (13) "Embankment dam" ***means***~~{shall mean}~~ any dam constructed of excavated natural
26 materials or of industrial waste materials;
- 27 (14) "Gravity dam" ***means***~~{shall mean}~~ a dam constructed of concrete or masonry that

1 relies on its weight for stability;

2 (15) ~~["The word "]~~"Person" **means**~~[shall mean]~~ any individual, public or private
3 corporation, political subdivision, government agency, municipality, copartnership,
4 association, firm, trust, estate, or other entity whatsoever;

5 (16) "Secretary" **means**~~[shall mean]~~ the secretary of the Energy and Environment
6 Cabinet;

7 (17) "Authorized representative" **means**~~[shall mean]~~ an individual specifically
8 authorized by the secretary to act ~~on~~~~[in]~~ his **or her** behalf;

9 (18) ~~["The word "]~~"Reservoir" **means**~~[shall mean]~~ any basin which contains or will
10 contain the water impounded by a dam;

11 (19) "Owner" **means**~~[shall mean]~~ any person who owns an interest in, controls, or
12 operates a dam; ~~and]~~

13 (20) "Livestock" **means**~~[shall mean]~~ cattle, sheep, swine, goats, horses, alpacas, llamas,
14 buffaloes, and any other animals of the bovine, ovine, porcine, caprine, equine, or
15 camelid species; **and**

16 **(21) "Base flood" means the elevation of surface water resulting from a flood that has**
17 **a one percent (1%) chance of equaling or exceeding that level in any given year.**

18 ➔Section 2. KRS 151.110 is amended to read as follows:

19 (1) (a) The conservation, development, and proper use of the water resources of the
20 Commonwealth of Kentucky have become of vital importance as a result of
21 population expansion and concentration, industrial growth, technological
22 advances, and an ever increasing demand for water for varied domestic,
23 agricultural, industrial, municipal, and recreational uses. It is recognized by
24 the General Assembly that excessive rainfall during certain seasons of the year
25 causes damage from overflowing streams. However, prolonged droughts at
26 other seasons curtail **domestic**, industrial, municipal, agricultural, and
27 recreational uses of water and seriously threaten the continued growth and

1 economic well-being of the Commonwealth. The advancement of the safety,
2 happiness, and welfare of the people and the protection of property require
3 that the power inherent in the people be utilized to promote and to regulate the
4 conservation, development, and most beneficial use of the water resources. It
5 is hereby declared that the general welfare requires that the water resources of
6 the Commonwealth be put to the beneficial use to the fullest extent of which
7 they are capable, that the waste or nonbeneficial use of water be prevented,
8 and that the conservation and beneficial use of water be exercised in the
9 interest of the people. Therefore, it is declared the policy of the
10 Commonwealth to actively encourage and to provide financial, technical, or
11 other support for projects that will manage~~control and store~~ our water
12 resources in order that the continued growth and development of the
13 Commonwealth might be ensured~~assured~~. To that end, it is declared to be
14 the purpose of KRS Chapters 146, 149, 151, 224, 262, and KRS 350.029 and
15 433.750 to 433.757 for the Commonwealth to permit, regulate, and participate
16 in the construction or financing of facilities to store surplus surface water for
17 future use; to conserve and develop the groundwater~~ground water~~ resources
18 of the Commonwealth; to require local communities to develop long range
19 water supply plans; to protect the rights of all persons equitably and
20 reasonably interested in the use and availability of water; to prohibit the
21 pollution of water resources and to maintain the normal flow of all streams so
22 that the proper quantity and quality of water will be available at all times to
23 the people of the Commonwealth; to provide for the adequate disposition of
24 water among the people of the Commonwealth entitled to its use during severe
25 droughts or times of emergency; to prevent harmful overflows and flooding;
26 to regulate the construction, maintenance, and operation of all dams and other
27 barriers of streams; to prevent the obstruction of streams and floodways by the

1 dumping of substances therein; to keep accurate records on the amount of
2 water withdrawal from streams and watercourses and reasonably regulate the
3 amount of withdrawal of public water; and to engage in other activities as may
4 be necessary to conserve and develop the water resources of the
5 Commonwealth of Kentucky, and to ensure adequate supply of water for
6 domestic, agricultural, recreational, and economic development uses.

7 (b) The cabinet shall:

- 8 1. Provide leadership in water use efficiency for all water uses;
- 9 2. Promote conservation;
- 10 3. Offer technical assistance and conduct research;
- 11 4. Be the lead agency with other state and local agencies to incorporate
12 conservation measures and incentives into their programs;
- 13 5. Sponsor "technology transfer sessions" on water conservation to
14 commercial and industrial operations;
- 15 6. Provide leadership to communities looking for information and methods
16 for coping with the issues of growth and water supply;
- 17 7. Provide recommendations and leadership for water resources, on-farm
18 and rural community drought and water assessment, monitoring, and
19 improvement for agricultural purposes; and
- 20 8. Have the authority to receive and disperse federal, state, and other funds
21 for the purpose of water resources, on-farm and community drought and
22 water assessment, monitoring, and improvements.

23 (c) Paragraph (b) of this subsection~~[(1)(b)]~~ shall not be construed as changing
24 the relationship between the cabinet and the Kentucky River Authority and
25 their respective responsibilities for oversight of the Kentucky River as set out
26 in KRS 151.700 and 151.720.

27 (2) It is a finding of the General Assembly that groundwater is an important but

1 vulnerable natural resource of this state, that the majority of rural Kentuckians rely
2 exclusively on groundwater for drinking, and that groundwater is inextricably
3 linked to surface waters which may also serve as a drinking water resource. It is also
4 a finding that groundwater is a resource equally vital for agricultural, commercial,
5 and industrial purposes and that useable groundwater is critical to the future
6 development of these industries. Therefore, it shall be the policy of this state to
7 manage groundwater for the health, welfare, and economic prosperity of all citizens.

8 ➔Section 3. KRS 151.112 is amended to read as follows:

9 (1) The cabinet shall develop a comprehensive and systematic planning process for the
10 long-range management and orderly development of the Commonwealth's water
11 resources. The planning process shall generate over each biennium a plan for the
12 implementation of specific goals and management objectives for the cabinet to
13 achieve in meeting the Commonwealth's water needs. The biennial plan shall serve
14 as the basis for the cabinet's budgeting process in allocating resources to the state's
15 water resource programs. The planning process shall be developed to:

16 (a) Protect, conserve, develop, and utilize the water resource in a manner
17 consistent with the Commonwealth's duties for management of natural
18 resources, the public's right to clean water, and the preservation of the natural,
19 scenic, cultural, historic, and aesthetic values of the environment;

20 (b) Provide a coordinated framework for cooperation among federal, interstate,
21 state, and local government agencies in the planning and management of
22 water resources, in a manner consistent with KRS Chapter 147 and KRS
23 224.10-100(13);

24 (c) Be both anticipatory of future needs and reactive to current needs~~[problems]~~;

25 (d) Provide for public involvement in the establishment of the comprehensive and
26 systematic planning process, in plan development and implementation, and
27 the allocation and prioritizing of resources for water resource management

1 and development;~~and~~

2 (e) Establish a process for the collection and coordination of data regarding
3 surface water and groundwater~~ground water~~ availability and quality,
4 including the presence of point and nonpoint sources of pollution, instream
5 flow information, withdrawal and use information, an assessment of flood
6 damage and storm water management problems, and an identification and
7 assessment of future data needs; and

8 (f) Request technical assistance from any agency or organization the cabinet
9 deems necessary to carry out its duties as established in this chapter.

10 (2) The continuous planning process shall include goals and objectives for
11 groundwater~~ground~~ and surface water quantity and quality management in order
12 to assess the effectiveness of current programs in addressing the comprehensive
13 water needs of the Commonwealth and to gauge the need for new or different
14 programs to recommend to the General Assembly for legislation.

15 ➔Section 4. KRS 151.116 is amended to read as follows:

16 The cabinet shall promulgate administrative regulations to carry out the program and
17 shall consult with the Cabinet for Economic Development and the Kentucky
18 Infrastructure Authority in developing those regulations. The administrative regulations
19 shall set out the details which are to be included in the water supply plans, the procedure
20 for counties and their municipalities and public water systems to apply for financial
21 assistance to pay for the plans, and the criteria and process by which the cabinet will
22 approve plans. The cabinet shall assemble all information in a uniform database available
23 to all agencies and concerned entities.

24 ➔Section 5. KRS 151.120 is amended to read as follows:

25 (1) Water occurring in any stream, lake, groundwater,~~ground water, subterranean~~
26 ~~water~~ or other body of water in the Commonwealth which may be applied to any
27 useful and beneficial purpose is hereby declared to be a natural resource and public

1 water of the Commonwealth and subject to control or regulation for the public
2 welfare as provided in KRS Chapters 146, 149, 151, 262 and 350.029 and 433.750
3 to 433.757.

4 (2) Diffused surface water which flows vagrantly over the surface of the ground shall
5 not be regarded as public water, and the owner of land on which such water falls or
6 flows shall have the right to its use. Water left standing in natural pools in a natural
7 stream when the natural flow of the stream has ceased, shall not be regarded as
8 public water and the owners of land contiguous to that water shall have the rights to
9 its use.

10 ➔Section 6. KRS 151.125 is amended to read as follows:

11 The secretary shall exercise the following authority and powers:

12 (1) To administer and enforce the provisions of this chapter and all rules and
13 regulations and orders promulgated thereunder;

14 (2) To conduct or obtain investigations, research, experiments, training programs and
15 demonstrations, and to collect and disseminate information relating to the safe
16 construction, operation, or maintenance of dams and reservoirs;

17 (3) To adopt, after giving public notice and affording an opportunity to all interested
18 persons to appear and offer evidence at a public hearing in connection therewith,
19 general rules and administrative regulations for flood control and water resources,
20 and minimum standards for floodplain management, deemed~~[which he deems]~~
21 necessary to accomplish the purposes of this chapter. Such rules and administrative
22 regulations, which shall have the force and effect of law, shall be of uniform
23 application as far as practicable, but they may take proper account of differences in
24 topography, geology, soil conditions, climate, hydrology, and use of the reservoir
25 and the lands lying in the floodplain downstream from the dam;

26 (4) To adopt, in accordance with KRS Chapter 13A~~[without notice or hearing]~~, rules
27 and administrative regulations with respect to procedural aspects of hearings, the

- 1 filing of reports and orders, the issuance of inspection reports~~[certificates of~~
2 ~~inspection]~~, construction permits, water withdrawal permits, and other procedural
3 matters;
- 4 (5) To issue orders requiring the adoption by an owner of remedial measures necessary
5 for the safety of life, or public or private property, or for carrying out the provisions
6 of this chapter, or rules and administrative regulations issued thereunder;
- 7 (6) To examine and approve or disapprove applications for construction permits for the
8 construction, enlargement, repair, or alteration of a dam;
- 9 (7) To establish standards for the safe construction, enlargement, repair, alteration,
10 maintenance, or operation of a dam or reservoir. Such standards shall be issued in
11 the form of administrative regulations as described in subsection (3) of this section;
- 12 (8) To make such investigations or inspections as necessary to determine the condition
13 of a dam to ensure~~[insure]~~ compliance with any provisions of this chapter,
14 including the right to enter at any time upon an area affected for such purposes and
15 the right of ingress and egress across intervening properties;
- 16 (9) To order the suspension or revocation, after warning, of any inspection
17 report~~[certificate of inspection]~~, construction permit, or water withdrawal permit for
18 failure to comply with any of the provisions of this chapter or with any rules,
19 administrative regulations, or orders adopted pursuant thereto, or with any of the
20 conditions contained in or attached to the inspection report~~[certificate of~~
21 ~~inspection]~~, construction permits, or water withdrawal permits;
- 22 (10) To order the immediate cessation of any act that is started or continued without a
23 construction permit or water withdrawal permit as required by~~[the provisions of]~~
24 this chapter; and
- 25 (11) To institute and prosecute all such court actions as may be necessary to obtain the
26 enforcement of any order issued by the cabinet in carrying out the provisions of this
27 chapter.

1 ➔Section 7. KRS 151.220 is amended to read as follows:

2 The cabinet shall:

- 3 (1) Undertake for and as the official agency of the state, such studies and prepare such
4 reports and recommendations as may be necessary to establish a statewide program
5 of flood control, ~~{(including major drainage)}~~, and a statewide program for the
6 development of water resources;
- 7 (2) Study and review for the state as its official agency, all survey reports, engineering
8 reports, and other reports concerning or affecting water related projects within the
9 state which are proposed for construction by the federal government, the state
10 government or any agency or subdivision thereof, or which will involve the
11 expenditure of federal or state funds, and which might affect flood control or the
12 development of water resources of the state, and to act as the official representative
13 of the state in any representations, recommendations, or requests to Congress or the
14 General Assembly concerning such projects or the priority which should be
15 accorded them with relation to the statewide program;
- 16 (3) Make a continuous water resources study of data from other existing state or federal
17 agencies and such other sources as may be available. From such studies, the cabinet
18 shall formulate conclusions and recommendations for use by the Commonwealth in
19 assuring the maximum beneficial use of the water resources of the Commonwealth;
- 20 (4) Cooperate with any local, state, or federal agency, or the agencies of any other state
21 engaged or proposing to engage in any work which will affect or be affected by the
22 functions of the cabinet and may lend to or receive from any such agency such
23 financial assistance as may be necessary within the limits of authorized expenditure;
- 24 (5) Have, for flood control and water resources development purposes, jurisdiction over
25 all streams within or bordering upon the state. The cabinet shall have the authority
26 to establish and enforce floodways along such streams;
- 27 (6) Have authority to accept and use cooperative agreements, ~~{gifts, contributions,~~

1 ~~donations and~~ grants, **and other contributions; and**

2 (7) Be the official state agency for determination of stream mileage.

3 ➔Section 8. KRS 151.250 is amended to read as follows:

4 (1) Notwithstanding any other provision of law, no person and no city, county, or other
5 political subdivision of the state, including levee districts, drainage districts, flood
6 control districts or systems, or similar bodies, shall commence the construction,
7 reconstruction, relocation, or improvement of any dam, embankment, levee, dike,
8 bridge, fill, or other obstruction, ~~[(except those constructed by the **Kentucky**~~
9 **Transportation Cabinet,** ~~Department of Highways) across or along any stream, or]~~
10 in the **floodplain or** floodway of any stream, unless the plans and specifications for
11 such work have been:

12 **(a)** Submitted by the person or political subdivision responsible for the
13 construction, reconstruction, or improvement; ~~and [such plans and~~
14 ~~specifications have been]~~

15 **(b)** Approved in writing by the cabinet and a permit issued.

16 However, the cabinet by **administrative** regulation may exempt those dams,
17 embankments, or other obstructions which are not of such size or type as to require
18 approval by the cabinet in the interest of safety or retention of water supply.

19 (2) No person, city, county, or other political subdivision of the state shall commence
20 the filling of, **or place a building, barrier, or obstruction of any sort in,** any area **in**
21 **the floodplain or floodway** ~~[with earth, debris, or any other material, or raise the~~
22 ~~level of any area in any manner, or place a building, barrier or obstruction of any~~
23 ~~sort on any area located adjacent to a river or stream or in the floodway of the~~
24 ~~stream so that such filling, raising or obstruction will in any way affect the flow of~~
25 ~~water in the channel or in the floodway of the stream]~~ unless plans and
26 specifications for such work have been submitted to and approved by the cabinet
27 and a permit issued as required in subsection (1) **of this section** ~~[above].~~

1 (3) Nothing in this section is intended to give the cabinet any jurisdiction or control
 2 over the construction, reconstruction, improvement, enlargement, maintenance, or
 3 operation of any drainage district, ditch, or system established for agricultural
 4 purposes. However, the cabinet may require approval prior to construction of
 5 structures, dams, embankments, levees, bridges, fill, or other construction related
 6 to agricultural operations that impact the base flood of a stream~~, or to require~~
 7 ~~approval of the same except where such obstruction of the stream or floodway is~~
 8 ~~determined by the cabinet to be a detriment or hindrance to the beneficial use of~~
 9 ~~water resources in the area, and the person or political subdivision in control thereof~~
 10 ~~so notified~~.

11 **(4)** The Department for Natural Resources through KRS Chapter 350 shall have
 12 exclusive jurisdiction over KRS Chapter 151 concerning the regulation of dams,
 13 levees, embankments, dikes, bridges, fills, or other obstructions across or along any
 14 stream or in the floodway of any stream which structures are permitted under KRS
 15 Chapter 350 for surface coal mining operations.

16 ➔Section 9. KRS 151.260 is amended to read as follows:

17 (1) All applications for permits required by KRS 151.250 shall be in the form and
 18 manner prescribed by the cabinet.

19 (2) Unless waived by the cabinet, all plans and specifications submitted for approval
 20 shall be drawn by an engineer, licensed to practice as a professional engineer under
 21 the provisions of KRS Chapter 322.

22 (3) Upon receipt of all plans and specifications, the cabinet shall notify the applicant in
 23 writing within twenty (20) working days for a floodplain permit application, and
 24 within forty-five (45) working days for a dam permit application, either that the
 25 permit will be issued or denied, or that certain modifications in the plans or
 26 specifications must be made before a permit will be issued.

27 **(4) The secretary may establish, by administrative regulation promulgated pursuant**

1 to KRS Chapter 13A, a requirement for the owner of any dam classified by the
 2 cabinet as high hazard, moderate hazard, or significant hazard to develop,
 3 exercise, and maintain an emergency action plan certified by the owner of the
 4 dam.

5 ➔Section 10. KRS 151.293 is amended to read as follows:

6 (1) Within sixty (60) days of completion of an on-site inspection of an existing dam,
 7 the cabinet **shall prepare an inspection report**~~[may either grant a certificate of~~
 8 ~~inspection, or deny the certificate of inspection]~~ and notify the owner in writing~~],~~
 9 ~~stating the reasons for denial].~~

10 (2) ~~[In deciding whether or not a certificate of inspection should be issued, the cabinet~~
 11 ~~shall take into account all pertinent facts and conditions, but shall not issue a~~
 12 ~~certificate unless the following conditions have been met:~~

13 (a) ~~The proposed action in the judgment of the cabinet will be conducted in such a way~~
 14 ~~that the safety of the public is adequately provided for;~~

15 (b) ~~All information requested by the cabinet has been provided; and~~

16 (c) ~~The changed flow of the stream or level of the reservoir will not significantly~~
 17 ~~interfere with a beneficial use by other water users.~~

18 (3) ~~In granting a certificate of inspection,]~~The cabinet may impose such conditions
 19 relating to the inspection, operation, maintenance, alteration, repair, use, or control
 20 of a dam or reservoir as it determines are necessary for the protection of public
 21 health, safety, or welfare.

22 **(3)**~~[(4)] The cabinet may establish hazard categories for dams based on downstream
 23 floodplain use, size, or type of dam, or other criteria, and may impose different
 24 conditions or types of conditions on the approval of dams or reservoirs in the
 25 different categories. The hazard categories in all cases shall be based only on the
 26 actual risk imposed by the dam.~~

27 **(4)**~~[(5)] The cabinet may utilize the results and information provided by or for the~~

1 United States Army Corps of Engineers pursuant to the provisions of **Pub. L.**
2 **No.** ~~[Public Law]~~ 92-367 if the information is not more than one (1) year old at the
3 time of use.

4 ~~(5)~~~~(6)~~ **Inspection reports** ~~[Certificates of inspection]~~ shall be for a definite period of
5 time, not to exceed five (5) years, as determined by the cabinet and stated on the
6 **inspection report** ~~[certificate]~~. In determining the period of inspection, the cabinet
7 may take account of any circumstances pertinent to the situation, including, but not
8 limited to, the size and type of dam, topography, geology, soil conditions,
9 hydrology, climate, use of the reservoir, the lands lying in the floodplain
10 downstream from the dam, and the hazard category of the dam.

11 ~~(6)~~~~(7)~~ The cabinet may modify **an inspection report** ~~[a certificate of inspection]~~ or
12 the conditions attached to it. Such modification shall become effective ninety (90)
13 days following issuance by the cabinet of a revised **inspection report** ~~[certificate]~~,
14 except when the cabinet finds that a state of emergency exists and that life or
15 property would be endangered by delay. In case of an emergency declared by the
16 cabinet, the new conditions shall be effective immediately.

17 ~~(7)~~~~(8)~~ Specific guidelines for issuance and renewal of **an inspection**
18 **report** ~~[certificate of inspection]~~ for earth embankment dams shall be provided by
19 administrative regulations which shall address at least the following areas:

20 (a) The hydraulic capacity requirements for each category of dam shall be
21 provided. The probable maximum precipitation as determined by the **National**
22 **Oceanic and Atmospheric Administration or another scientific evidence-**
23 **based means** ~~[United States Weather Service]~~ shall be used only where it can
24 be clearly demonstrated that failure of the dam by overtopping would result in
25 greater loss of life than would occur if the dam did not exist and only for small
26 watersheds, since such large rainfall events are not expected to occur over
27 large areas. The cabinet shall provide a table of factors that reduce this rainfall

- 1 appropriately for larger watersheds;
- 2 (b) Minimum criteria for the embankment stability of the dam, including
- 3 consideration of such factors as steepness of slopes, strength of materials, and
- 4 earthquake loadings shall be specified;
- 5 (c) Variance procedures for applicable hydraulic and stability considerations shall
- 6 be included for, but not limited to, variances to hydraulic criteria where only a
- 7 small number of persons are at risk and where a reliable, effective emergency
- 8 preparedness system will be installed; where a risk analysis demonstrates that
- 9 at rainfall levels less than that specified in the administrative regulation there
- 10 is no risk that actually results from the dam; where an owner can demonstrate
- 11 that the dam substantially conforms to the criteria in the administrative
- 12 regulation; and, for dams that pose a risk of economic damages only, where
- 13 the owner provides indemnification against potential damages;
- 14 (d) Before any variance is issued, the affected public shall be notified of the
- 15 cabinet's intended action and allowed to make known any objections or
- 16 concerns that it might have;
- 17 (e) Whenever the owner of a dam has requested a variance and the request has not
- 18 been granted or has not been granted in the manner requested, the owner or
- 19 aggrieved party may petition the cabinet to have the variance request reviewed
- 20 and a final determination made by the cabinet. If not satisfied by the final
- 21 determination of the cabinet, the party may seek administrative remedy from
- 22 the cabinet under the provisions of KRS 151.182;
- 23 (f) Items of general maintenance of a dam and all its appurtenances shall include
- 24 provisions for at least the following: dams shall be mowed regularly; dams
- 25 shall be free of trees and brush; animal burrows shall not be allowed on dams;
- 26 slides, erosion and cracks that could pose problems to dams shall be properly
- 27 repaired; action shall be taken to alleviate excessive wetness and abnormal

1 seepage; appurtenances that are necessary for the proper operation and
2 maintenance of the dam shall be kept in proper working condition;

3 (g) Provisions shall be made whereby the cabinet will allow for staged renovation
4 of dams that do not meet the criteria of the administrative regulations and
5 shall clearly identify the circumstances under which staging is allowable and
6 set a maximum time limit that may be allowed for bringing the dam into
7 compliance. Other provisions shall require the owner to develop and maintain
8 an emergency action plan, to provide interim insurance, bonding or other
9 indemnification, and on a frequent basis as specified by the cabinet, to inspect
10 the dam and report to the cabinet the status of any facilities or conditions of
11 concern; and

12 (h) If the cabinet has previously required a dam to be upgraded to meet a certain
13 dam safety standard, it shall not require that the dam be upgraded again
14 because of a change in the administrative regulation with regard to that same
15 standard. However, if the owner proposes substantial construction on the dam
16 or if the dam must be repaired due to indications of distress or to partial
17 failure, the cabinet may require the owner to bring the dam into full
18 compliance with current standards.

19 ~~(8)~~~~(9)~~ The cabinet shall establish guidelines on a case-by-case basis for gravity dams
20 and other types of dams that are unusual to the Commonwealth, and shall follow
21 recognized engineering practice.

22 ~~(9)~~~~(10)~~ Plans and specifications submitted to the cabinet shall be the responsibility of
23 and signed by an engineer licensed by the Commonwealth and experienced in the
24 design and construction of dams, as determined by the cabinet.

25 ➔Section 11. KRS 151.310 is amended to read as follows:

26 No person, city, county, or other political subdivision of the state shall deposit or cause to
27 be deposited any matter that will in any way restrict or disturb the flow of water in the

1 channel or in the floodway of any stream except where a permit has been issued for
 2 construction under KRS 151.250, or to encroach on the reservoir area of any dam
 3 ~~authorized by the Congress of the United States, or~~ under the jurisdiction of the
 4 Commonwealth, or any of its political subdivisions.

5 ➔Section 12. KRS 151.600 is amended to read as follows:

6 (1) The *cabinet shall administer National Flood Insurance Program-related*
 7 *activities, by developing*~~[water resources authority shall develop]~~ a public
 8 information program for use by local units of government which will assist them in
 9 the development of *floodplain*~~[flood plain]~~ management and flood hazard
 10 mitigation programs. The *cabinet*~~[authority]~~ shall make the public information
 11 program available statewide and easily accessible.

12 (2) The public information program shall be designed to increase public awareness and
 13 community responsiveness toward *floodplain*~~[flood plain]~~ management and shall
 14 include, but not be restricted to, the following:

15 (a) *Floodplain*~~[Flood plain]~~ information training workshops for local officials
 16 and citizens;

17 (b) *Floodplain*~~[Flood plain]~~ information booklets describing *floodplain*~~[flood~~
 18 ~~plain]~~ management, including flood warnings, overall preparedness, flood
 19 insurance, and flood proofing of buildings; and

20 (c) Model *floodplain*~~[flood plain]~~ development ordinances for adoption by local
 21 governmental units.

22 ➔Section 13. KRS 224.20-110 is amended to read as follows:

23 (1) No person shall, directly or indirectly, emit into or discharge into the air under the
 24 jurisdiction of the Commonwealth, or cause, permit, or allow to be emitted or
 25 discharged into such air any contaminants as provided for in subsection (1) of KRS
 26 224.1-010 that shall cause or contribute to the pollution of the air of the
 27 Commonwealth in contravention of the emission standards or the ambient air

1 standards adopted by the cabinet, or in contravention of any of the rules,
2 regulations, or orders of the cabinet, or in contravention of any of the provisions of
3 this chapter.

4 (2) For the purpose of fostering willing compliance with the emission standards and the
5 ambient air standards adopted by the cabinet, the cabinet shall promulgate and
6 implement administrative regulations which give effect to Section 7412(i)(5) of
7 Title 42, United States Code, relating to alternative emission limitations allowed for
8 early reduction of emissions. The program established by this subsection shall be
9 conducted strictly in accordance with the federal law.

10 **(3) Notwithstanding any other provisions of law to the contrary, the cabinet shall not**
11 **require agricultural operations to meet permit limits, ambient standards, or other**
12 **compliance requirements more stringent than, or in addition to, emissions limits,**
13 **standards, or requirements enforced by the United States Environmental**
14 **Protection Agency.**

15 ➔Section 14. The following KRS section is repealed:

16 151.230 Minimum standards for flood plain management to be set by administrative
17 regulation -- Local application and effect.