

1 AN ACT relating to environmental permitting.

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

3 ➔SECTION 1. A NEW SECTION OF SUBCHAPTER 16 OF KRS CHAPTER
4 224 IS CREATED TO READ AS FOLLOWS:

5 *(1) When issuing permits under Section 3 of this Act for discharges into waters*
6 *designated as outstanding state resource waters due to the water's support of*
7 *federally threatened and endangered species of aquatic organisms, the cabinet*
8 *shall, to the extent allowable under this chapter and the federal Water Pollution*
9 *Control Act, 33 U.S.C. sec. 1251 et seq.:*

10 *(a) Presume that water quality will be maintained and protected if the applicant*
11 *complies with the technology-based effluent limitations for the point source*
12 *category for the industry in which the permit applicant operates or with any*
13 *species-specific protection measures imposed on the applicant's operation*
14 *by any other state or federal agency in any other permit, approval, or review*
15 *applicable to the operation for which the permit under Section 3 of this Act*
16 *is sought;*

17 *(b) In determining whether lowering of water quality or habitat modification*
18 *will have an adverse effect on the threatened or endangered species that the*
19 *water supports, give substantial weight to any evidence submitted by the*
20 *permit applicant indicating that discharges from similar operations have not*
21 *caused a material decrease in the overall number of the same or similar*
22 *threatened or endangered species of aquatic organisms;*

23 *(c) Not impose any conditions that are more stringent than those required by*
24 *the United States Fish and Wildlife Service to protect any particular*
25 *threatened or endangered species of aquatic organism or aquatic habitat*
26 *with respect to the discharge or operation; and*

27 *(d) In the absence of any restrictions, conditions, or limitations imposed on the*

1 discharge by the United States Fish and Wildlife Service, presume that
 2 compliance with numeric water quality standards applicable to the
 3 discharge shall constitute compliance with narrative water quality standards
 4 applicable to outstanding state resource waters that support federally
 5 recognized threatened or endangered species.

6 (2) The cabinet shall clearly document its compliance with the requirements of
 7 subsection (1) of this section in the fact sheet for the permit. Notwithstanding any
 8 provision of law to the contrary, if the cabinet fails to clearly and adequately
 9 document its compliance with the requirements of subsection (1) of this section,
 10 any term, limitation, condition, or other requirement imposed on the permit based
 11 on a narrative water quality standard for outstanding state resource waters shall
 12 be automatically stayed upon the filing of a petition for administrative hearing
 13 related to the permit by the applicant.

14 ➔Section 2. KRS 224.10-225 is amended to read as follows:

15 (1) The secretary of the Energy and Environment Cabinet shall facilitate the permitting
 16 of:

17 (a) Coal-fired electric generation plants or industrial energy facilities in the
 18 Commonwealth; and

19 (b) Upon request of the applicant, surface coal mining and reclamation
 20 operations in the Commonwealth;

21 by developing procedures for one (1) stop shopping for environmental permits.

22 (2) Upon request by an applicant for environmental permits for an industrial energy
 23 facility or a surface coal mining and reclamation operation, the secretary, in
 24 consultation with the applicant, shall establish specific time periods for actions to
 25 be taken in the consideration of its permit applications. The time periods established
 26 shall not exceed those adopted by administrative regulations promulgated pursuant
 27 to KRS 224.10-220. Notwithstanding KRS 224.10-420(2), failure by the cabinet to

1 adhere to the time periods established pursuant to this section or established by
 2 administrative regulations promulgated pursuant to KRS 224.10-220 shall
 3 constitute the making of a final determination of the cabinet, and the applicant,
 4 at its election, may:

5 (a) Initiate an action for mandamus, declaratory judgment, or other specific
 6 relief in the Circuit Court for the county in which the surface coal mining
 7 and reclamation operation is located; or

8 (b) Initiate an administrative hearing under KRS 224.10-420(2).

9 (3) As used in this section, "surface coal mining and reclamation operations" has
 10 the same meaning as in KRS 350.010.

11 ➔Section 3. KRS 224.16-050 is amended to read as follows:

12 (1) The cabinet may issue federal permits pursuant to 33 U.S.C. sec. 1342(b) of the
 13 federal Water Pollution Control Act, ~~{(33 U.S.C. sec.{~~secs.~~} 1251 et seq.,)}~~ subject
 14 to the conditions imposed in 33 U.S.C. secs. 1342(b) and 1342(d). The cabinet may
 15 issue federal permits pursuant to 33 U.S.C. sec. 1344(e) and (g) of the federal Water
 16 Pollution Control Act, 33 U.S.C. sec.{~~secs.~~} 1251 et seq., subject to the conditions
 17 imposed in 33 U.S.C. sec. 1344(h), (i), and (j). Any exemptions granted in the
 18 issuance of NPDES permits shall be pursuant to 33 U.S.C. sec.{~~secs.~~} 1311, 1312,
 19 and 1326(a). The cabinet shall report to the standing committees of jurisdiction over
 20 environmental protection, and appropriations and revenue, no later than January 1,
 21 2006, on the costs, personnel requirements, and any statutory or regulatory changes
 22 needed to support state assumption of the permitting program under 33 U.S.C.
 23 1344(e) and (g), and the anticipated benefits in permit streamlining and
 24 environmental quality from state administration of the program.

25 (2) (a) The cabinet shall make certification determinations~~{may certify}~~ pursuant to
 26 33 U.S.C. sec. 1341 as to whether~~{that}~~ applicants for a federal permit for the
 27 construction or operation of facilities which may result in a discharge into the

1 waters of the Commonwealth will comply with the applicable provisions of
2 the federal Water Pollution Control Act, ~~{33 U.S.C. sec.} 1251 et~~
3 ~~seq.~~

4 **(b) Within thirty (30) calendar days of receipt of an application for certification**
5 **under paragraph (a) of this subsection, the cabinet shall notify the applicant**
6 **in writing that the application is complete or that the cabinet requires**
7 **additional information to process the application. If the cabinet determines**
8 **that additional information is necessary to process the application, the**
9 **notice provided pursuant to this paragraph shall clearly set forth the**
10 **necessary additional information, which the applicant shall provide within**
11 **thirty (30) calendar days of receiving the notice of incompleteness.**

12 **(c) Unless a longer period of time is requested by the applicant, the cabinet**
13 **shall make a final determination on whether to issue the certification or**
14 **deny the application within sixty (60) calendar days of notifying the**
15 **applicant that the application is complete pursuant to paragraph (b) of this**
16 **subsection.**

17 **(d) If the cabinet does not make a final determination within sixty (60) calendar**
18 **days of a notification of completeness in accordance with paragraph (c) of**
19 **this subsection, the cabinet shall be considered to have waived certification**
20 **requirements by the Commonwealth, unless the applicant has voluntarily**
21 **agreed in writing to a longer review period not to exceed one (1) year from**
22 **the cabinet's receipt of the initial application.**

23 **(3) The certification provided under subsection (2) of this section shall be limited in**
24 **scope to water quality impacts from the discharge only and shall not include**
25 **other limitations or constitute a review of the proposed activity as a whole.**~~{The~~
26 ~~cabinet shall not undertake either of the actions authorized in subsections (1) or (2)~~
27 ~~of this section unless the Governor of the Commonwealth has determined that such~~

1 ~~activity will be in the best interests of the environment and the people of the~~
2 ~~Commonwealth].~~

3 (4) The cabinet shall not impose under any permit issued pursuant to this section any
4 effluent limitation, monitoring requirement, or other condition which is more
5 stringent than the effluent limitation, monitoring requirement, or other condition
6 which would have been applicable under federal regulation if the permit were
7 issued by the federal government. **The cabinet shall not postpone or delay the**
8 **review of, or condition, delay, or refuse the issuance of, any permit under 33**
9 **U.S.C. sec. 1342(b) of the Federal Water Pollution Control Act on the applicant's**
10 **need for or receipt of any other federal, state, or local permit, certification,**
11 **license, authorization, or other approval.**

12 (5) Nonprofit organizations which have been qualified under Section 501(c)(3) of the
13 Internal Revenue Code and which operate their own treatment facilities and which
14 are designated for capacities less than ten thousand (10,000) gallons per day shall
15 be charged a fee no greater than fifty dollars (\$50) by the cabinet to process a
16 construction permit, nor a fee greater than twenty dollars (\$20) per year for an
17 operating permit for one (1) facility. These fees shall in no case be higher than the
18 fees charged by the cabinet to process permit applications for comparable privately
19 owned facilities. This subsection shall not apply to any school or waterworks
20 owned by a water district, water association, or municipality and established
21 pursuant to KRS Chapters 74 or 106.

22 (6) The following activities do not require a permit issued under 33 U.S.C. sec. 1344.
23 The discharge of dredged or fill material:

24 (a) From normal farming, silviculture, and ranching activities such as plowing,
25 seeding, cultivating, minor draining, harvesting for the production of food,
26 fiber, and forest products, or upland soil and water conservation practices;

27 (b) For the purpose of maintenance, including emergency reconstruction of

- 1 recently damaged parts of currently serviceable structures such as dikes,
2 dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or
3 approaches, and transportation structures;
- 4 (c) For the purpose of construction or maintenance of farm or stock ponds,
5 irrigation ditches, or the maintenance of drainage ditches;
- 6 (d) For the purpose of construction of temporary sedimentation basins on a
7 construction site which does not include placement of fill material into the
8 navigable waters; or
- 9 (e) For the purpose of construction or maintenance of farm roads, forest roads, or
10 temporary roads for moving mining equipment, where the roads are
11 constructed and maintained, in accordance with best management practices, to
12 ensure that flow and circulation patterns and chemical and biological
13 characteristics of the navigable waters are not impaired, that the reach of the
14 navigable waters is not reduced, and that any adverse effect on the aquatic
15 environment will be minimized.
- 16 (7) Prior to assuming delegated authority from the United States Environmental
17 Protection Agency to administer 33 U.S.C. sec. 1344(e) and (g), the cabinet shall
18 enter into a memorandum of agreement with the United States Department of
19 Agriculture (USDA) regarding wetlands delineation on agricultural lands or lands
20 owned or operated by a USDA program participant. The cabinet shall give the same
21 deference to wetlands delineations made by USDA as would have been given by a
22 federal agency administering 33 U.S.C. sec. 1344(e) and (g).
- 23 (8) The cabinet may establish by regulation a fee for processing permit applications
24 under 33 U.S.C. sec. 1344.