AN ACT relating to environmental protection and declaring an emergency.

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

➔Section 1. KRS 224.1-010 is amended to read as follows:

As used in this chapter unless the context clearly indicates otherwise:

(1) "Air contaminant" includes smoke, dust, soot, grime, carbon, or any other particulate matter, radioactive matter, noxious acids, fumes, gases, odor, vapor, or any combination thereof;

(2) "Air contaminant source" means any and all sources of emission of air contaminants, whether privately or publicly owned or operated. Without limiting the generality of the foregoing, this term includes all types of business, commercial and industrial plants, works, shops, and stores, and heating and power plants and stations, buildings and other structures of all types, including single and multiple family residences, apartments, houses, office buildings, public buildings, hotels, restaurants, schools, hospitals, churches, and other institutional buildings, automobiles, trucks, tractors, buses and other motor vehicles, garages and vending and service locations and stations, railroad locomotives, ships, boats and other waterborne craft, portable fuel-burning equipment, incinerators of all types (indoor and outdoor), refuse dumps and piles, and all stack and other chimney outlets from any of the foregoing;

(3) "Air pollution" means the presence in the outdoor atmosphere of one (1) or more air contaminants in sufficient quantities and of such characteristics and duration as is or threatens to be injurious to human, plant, or animal life, or to property, or which unreasonably interferes with the comfortable enjoyment of life or property;

(4) "Closure" means the time at which a waste treatment, storage, or disposal facility permanently ceases to accept wastes, and includes those actions taken by the owner or operator of the facility to prepare the site for post-closure monitoring and maintenance or to make it suitable for other uses;

(5) "Compost" means solid waste which has undergone biological decomposition of organic matter, been disinfected using composting or similar technologies, been stabilized to a degree which is potentially beneficial to plant growth and which is approved for use or sale as a soil amendment, artificial topsoil, growing medium amendment, or other similar uses;

(6) "Composting" means the process by which biological decomposition of organic solid waste is carried out under controlled aerobic conditions, and which stabilizes the organic fraction into a material which can easily and safely be stored, handled, and used in an environmentally acceptable manner:

(a) "Composting" may include a process which creates an anaerobic zone within the composting material;

(b) "Composting" does not include simple exposure of solid waste under uncontrolled conditions resulting in natural decay;

(7) "Demonstration" means the initial exhibition of a new technology, process or practice or a significantly new combination or use of technologies, processes or practices, subsequent to the development stage, for the purpose of proving technological feasibility and cost effectiveness;

(8) "Cabinet" means the Energy and Environment Cabinet;

(9) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any waste into or on any land or water so that such waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters;

(10) "District" means an air pollution control district as provided for in KRS Chapter 77;

(11) "Effluent limitations" means any restrictions or prohibitions established under state law which include, but are not limited to, effluent limitations, standards of performance for new sources, and toxic effluent standards on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are

discharged into waters;

(12) "Generator" means any person, by site, whose act or process produces waste;

(13) "Materials recovery facility" means a solid waste management facility that provides for the extraction from solid waste of recyclable materials, materials suitable for use as a fuel or soil amendment, or any combination of those materials;

(14) "Municipal solid waste disposal facility" means any type of waste site or facility where the final deposition of any amount of municipal solid waste occurs, whether or not mixed with or including other waste allowed under Subtitle D of the Federal Resource Conservation and Recovery Act of 1976, as amended, and includes but is not limited to incinerators and waste-to-energy facilities that burn municipal solid waste and contained and residential landfills, but does not include an advanced recycling facility or a waste site or facility which is operated exclusively by a solid waste generator on property owned by the solid waste generator which accepts only industrial solid waste from the solid waste generator or industrial solid waste generated at another facility owned and operated by the generator or wholly-owned subsidiary, or a medical waste incinerator which is owned, operated, and located on the property of a hospital or university which is regulated by the cabinet and used for the purpose of treatment, prior to landfill, of medical waste received from the generator exclusively or in combination with medical waste generated by professionals or facilities licensed or regulated or operated by the Commonwealth;

(15) "Municipal solid waste reduction" means source reduction, waste minimization, reuse, recycling, composting, and materials recovery;

(16) "Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, federal agency, state agency, city, commission, political subdivision of the Commonwealth, or any interstate body;

(17) "Post-closure monitoring and maintenance" means the routine care, maintenance,

and monitoring of a solid waste or hazardous waste treatment, storage, or disposal facility following closure of the facility;

(18) "Publicly owned treatment works" means any device or system used in the treatment (including recycling and recovery) of municipal sewage or industrial wastes of a liquid nature which is owned by the Commonwealth or a political subdivision of the Commonwealth;

(19) "Recovered material" means those materials, including but not limited to compost, which have known current use, reuse, or recycling potential, which can be feasibly used, reused, or recycled, and which have been diverted or removed from the solid waste stream for sale, use, reuse, or recycling, whether or not requiring subsequent separation and processing, but does not include materials diverted or removed for purposes of energy recovery or combustion except refuse-derived fuel (RDF), which shall be credited as a recovered material in an amount equal to that percentage of the municipal solid waste received on a daily basis at the processing facility and processed into RDF; but not to exceed fifteen percent (15%) of the total amount of the municipal solid waste received at the processing facility on a daily basis. Notwithstanding any provision of law to the contrary, tire-derived fuel, as defined in subsection (53) of this section, shall be considered a recovered material;

(20) "Recovered material processing facility" means a facility engaged solely in the storage, processing, and resale or reuse of recovered material, but does not mean a solid waste management facility if solid waste generated by a recovered material processing facility is managed pursuant to this chapter and administrative regulations adopted by the cabinet;

(21) "Recycling" means any process by which materials which would otherwise become solid waste are collected, separated, or processed and reused or returned to use in the form of raw materials or products, including refuse-derived fuel when processed in accordance with administrative regulations established by the cabinet, but does

not include the incineration or combustion of materials for the recovery of energy;

(22) "Refuse-derived fuel" means a sized, processed fuel product derived from the extensive separation of municipal solid waste, which includes the extraction of recoverable materials for recycling and the removal of nonprocessables such as dirt and gravel prior to processing the balance of the municipal solid waste into the refuse-derived fuel product;

(23) "Secretary" means the secretary of the Energy and Environment Cabinet;

(24) "Sewage system" means individually or collectively those constructions or devices used for collecting, pumping, treating, and disposing of liquid or waterborne sewage, industrial wastes, or other wastes;

(25) "Termination" means the final actions taken by the cabinet as to a solid waste or hazardous waste treatment, storage, or disposal facility when formal responsibilities for post-closure monitoring and maintenance cease;

(26) "Waste site or facility" means any place where waste is managed, processed, or disposed of by incineration, landfilling, or any other method, but does not include a container located on property where solid waste is generated and which is used solely for the purpose of collection and temporary storage of that solid waste prior to off-site disposal, or a recovered material processing facility, or an advanced recycling facility, or the combustion of processed waste in a utility boiler;

(27) "Storage" means the containment of wastes, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such wastes;

(28) "Transportation" means any off-site movement of waste by any mode, and any loading, unloading, or storage incidental thereto;

(29) "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or

reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous;

(30) "Waste" means:

(a) "Solid waste" means any garbage, refuse, sludge, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining (excluding coal mining wastes, coal mining by-products, refuse, and overburden), agricultural operations, and from community activities, but does not include those materials including, but not limited to, sand, soil, rock, gravel, or bridge debris extracted as part of a public road construction project funded wholly or in part with state funds, recovered material, post-use polymers or recovered feedstocks, tire-derived fuel, special wastes as designated by KRS 224.50-760, solid or dissolved material in domestic sewage, manure, crops, crop residue, or a combination thereof which are placed on the soil for return to the soil as fertilizers or soil conditioners, or solid or dissolved material in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923):

1. "Household solid waste" means solid waste, including garbage and trash generated by single and multiple family residences, hotels, motels, bunkhouses, ranger stations, crew quarters, and recreational areas such as picnic areas, parks, and campgrounds, but it does not include tire-derived fuel;

2. "Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other service and

nonmanufacturing activities, excluding tire-derived fuel and household and industrial solid waste;

3. "Industrial solid waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste or a special waste as designated by KRS 224.50-760, including but not limited to waste resulting from the following manufacturing processes: electric power generation; fertilizer or agricultural chemicals; food and related products or by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products, except tire-derived fuel; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment; and

4. "Municipal solid waste" means household solid waste and commercial solid waste; and

(b) "Hazardous waste" means any discarded material or material intended to be discarded or substance or combination of such substances intended to be discarded, in any form which because of its quantity, concentration or physical, chemical or infectious characteristics may cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed;

(31) "Waste management district" means any county or group of counties electing to form under the provisions of KRS Chapter 109 and operate in conformance with the provisions of KRS Chapter 109 and with Section 4006, Resource Conservation and

Recovery Act of 1976, as amended (Public Law 94-580);

(32) "Water" or "waters of the Commonwealth" means and includes***:***

(a) Navigable waters, as defined in 33 U.S.C. sec. 1362;

(b) Sinkholes with open throat drains;

(c) Naturally occurring artesian or phreatic springs, as well as any other spring used as a source of domestic water supply; and

(d) Wellhead protection areas;~~[any and all rivers, streams, creeks, lakes, ponds, impounding reservoirs, springs, wells, marshes, and all other bodies of surface or underground water, natural or artificial,]~~

that are situated wholly or partly within or bordering upon the Commonwealth or within its jurisdiction;

(33) "Water pollution" means the alteration of the physical, thermal, chemical, biological, or radioactive properties of the waters of the Commonwealth in such a manner, condition, or quantity that will be detrimental to the public health or welfare, to animal or aquatic life or marine life, to the use of such waters as present or future sources of public water supply or to the use of such waters for recreational, commercial, industrial, agricultural, or other legitimate purposes;

(34) "Pollutant" means and includes dredged spoil, solid waste, incinerator residue, sewage, sewage sludge, garbage, chemical, biological or radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, industrial, municipal or agricultural waste, and any substance resulting from the development, processing, or recovery of any natural resource which may be discharged into water;

(35) "NPDES" means National Pollutant Discharge Elimination System;

(36) "Manifest" means the form used for identifying the quantity, composition, and the origin, routing, and destination of waste during its transportation from the point of generation to the point of disposal, treatment, or storage;

(37) "Open dump" means any facility or site for the disposal of solid waste which does

not have a valid permit issued by the cabinet or does not meet the environmental performance standards established under regulations promulgated by the cabinet;

(38) "Solid waste management" means the administration of solid waste activities: collection, storage, transportation, transfer, processing, treatment, and disposal, which shall be in accordance with a cabinet-approved county or multicounty solid waste management plan;

(39) "Solid waste management area" or "area" means any geographical area established or designated by the cabinet in accordance with the provisions of this chapter;

(40) "Solid waste management facility" means any facility for collection, storage, transportation, transfer, processing, treatment, or disposal of solid waste, whether such facility is associated with facilities generating such wastes or otherwise, but does not include a container located on property where solid waste is generated and which is used solely for the purpose of collection and temporary storage of that solid waste prior to off-site disposal, or a recovered material processing facility or advanced recycling facility, both of which are otherwise subject to regulation pursuant to this chapter for control of environmental impacts and to prevent any public nuisance;

(41) "Hazardous constituent" shall conform to the requirements of the Resource Conservation and Recovery Act (RCRA), as amended;

(42) "Land disposal" includes but is not limited to any placement of hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave;

(43) "Key personnel" means an officer, partner, director, manager, or shareholder of five percent (5%) or more of stock or financial interest in a corporation, partnership, or association or parent, subsidiary, or affiliate corporation and its officers, directors, or shareholders of five percent (5%) or more of stock or financial interest;

(44) "Universal collection" means a municipal solid waste collection system which is

established by ordinance and approved by the cabinet and requires access for each household or solid waste generator in a county. A commercial or industrial entity which transports or contracts for the transport of the municipal solid waste it generates or which operates a solid waste management facility for its exclusive use may be excluded from participation;

(45) "Governing body" means a county, a waste management district, an entity created pursuant to the Interlocal Cooperation Act, a taxing district created pursuant to the provisions of KRS 65.180 to 65.192, a special district created pursuant to the provisions of KRS 65.160 to 65.176, or counties acting under contract pursuant to KRS 109.082;

(46) "Convenience center" means a facility that is manned during operating hours for the collection and subsequent transportation of municipal solid wastes;

(47) "Transfer facility" means any transportation related facility including loading docks, parking areas, and other similar areas where shipments of solid waste are held or transferred during the normal course of transportation;

(48) "Collection box" means an unmanned receptacle utilized to collect municipal solid waste;

(49) "Newsprint" means that class or kind of paper chiefly used for printing newspapers and weighing more than twenty-four and one-half (24 1/2) pounds, but less than thirty-five (35) pounds for five hundred (500) sheets of paper two (2) feet by three (3) feet in size, on rolls that are not less than thirteen (13) inches wide and twenty-eight (28) inches in diameter and having a brightness of less than sixty (60);

(50) "Postconsumer waste paper" means discarded paper after it has served its intended use by a publisher;

(51) "Publisher" means a person engaged in the business of publishing newspapers, advertisement flyers, telephone books, and other printed material;

(52) "Recycled content" means the proportion of fiber in newsprint that is derived from

postconsumer waste paper;

(53) "Tire-derived fuel" or "TDF" means a product made from waste tires to the exact specifications of a system designed to accept tire-derived fuel as a primary or supplemental fuel source, that have been reduced to particle sizes not greater than two (2) inches by two (2) inches and that is destined for transportation from the waste tire processor for use as a fuel. "Tire-derived fuel" shall not mean refuse-derived fuel;

(54) "Industrial energy facility" means a facility that produces transportation fuels, synthetic natural gas, chemicals, or electricity through a gasification process using coal, coal waste, or biomass resources, and costing in excess of seven hundred fifty million dollars ($750,000,000) at the time of construction;

(55) "Advanced recycling" means a manufacturing process for the conversion of post-use polymers and recovered feedstocks into basic hydrocarbon raw materials, feedstocks, chemicals, and other products through processes that include pyrolysis, gasification, depolymerization, catalytic cracking, reforming, hydrogenation, solvolysis, and other similar technologies. "Advanced recycling" does not include energy recovery or the conversion of post-use polymers into fuel substitutes for use in energy production;

(56) "Advanced recycling facility" means a manufacturing facility that receives, stores, and converts post-use polymers and recovered feedstocks it receives using advanced recycling;

(57) "Depolymerization" means a manufacturing process where post-use polymers are broken into smaller molecules such as monomers and oligomers or raw, intermediate, or final products, plastics and chemical feedstocks, basic and unfinished chemicals, waxes, lubricants, coatings, and other basic hydrocarbons;

(58) "Gasification" means a process through which post-use polymers and recovered feedstocks are heated and converted into a fuel and gas mixture in an oxygen-

deficient atmosphere, and then converted into raw, intermediate, and final products;

(59) "Post-use polymer" means a plastic polymer that:

(a) Is derived from any industrial, commercial, agricultural, or domestic activities;

(b) Is not mixed with solid waste or hazardous waste on-site or during processing at the advanced recycling facility;

(c) Has a use or intended use as a feedstock for the manufacturing of other feedstocks, raw materials, intermediate products, or final products using advanced recycling;

(d) Has been sorted from solid waste and other regulated waste, but may contain residual amounts of solid waste and incidental contaminants or impurities; and

(e) Is processed at an advanced recycling facility or held at such facility prior to processing;

(60) "Pyrolysis" means a manufacturing process through which post-use polymers are heated in the absence of oxygen until melted and thermally decomposed, and are then cooled, condensed, and converted into raw materials, intermediate products, or final products;

(61) (a) "Recovered feedstock" means one (1) or more of the following materials that has been processed so that it may be used as feedstock in an advanced recycling facility:

1. Post-use polymers; and

2. Materials for which the United States Environmental Protection Agency has made a nonwaste determination pursuant to applicable federal requirements or has otherwise determined are feedstocks and not solid waste.

(b) "Recovered feedstock" does not include:

1. Unprocessed municipal solid waste; or

2. Material that is mixed with solid waste or hazardous waste on-site or during processing at an advanced recycling facility;~~[and]~~

(62) "Solvolysis" means a manufacturing process through which post-use polymers are purified with the aid of solvents while heated at low temperatures or pressurized to make raw materials, intermediate products, or final products, while allowing additives and contaminants to be removed. "Solvolysis" includes but is not limited to hydrolysis, aminolysis, ammonolysis, methanolysis, and glycolysis***; and***

(63) "Wellhead protection area" means and includes all wellhead protection areas as defined in 42 U.S.C. sec. 300h-7(e) and as determined by the cabinet pursuant to its obligations under 42 U.S.C. sec. 300h-7(a).

➔Section 2. KRS 224.1-300 is amended to read as follows:

~~[(1)]~~For purposes of KRS 224.1-300 and 224.1-310 only***:***~~[,]~~

(1) "Pollution control facility" ***means and includes***~~[shall mean and include]~~:

(a) Any property designed, constructed, or installed as a component part of any commercial or industrial premises for the primary purpose of eliminating or reducing the emission of, or ground level concentration of, particulate matter, dust, fumes, gas, mist, smoke, vapor, or odorous substances, or any combination thereof which renders air harmful or inimical to the health of persons or to property within this Commonwealth;

(b) Any disposal system or any treatment works, pretreatment works, appliance, equipment, machinery, or installation constructed, used, or placed in operation primarily for the purpose of reducing, controlling, or eliminating thermal pollution or water pollution caused by industrial waste, or what would be industrial waste, if discharged into the waters of the Commonwealth;

(c) Any disposal system or any appliance, equipment, machinery or installation constructed, used or placed in operation primarily for disposing of waste, converting waste into an item of real economic value or converting hazardous

waste to nonhazardous waste;

(d) Any property designed, constructed, or installed as a component part of any commercial or industrial premises for the primary purpose of eliminating or reducing the emission of sound which is harmful or inimical to the health of persons or to property, or materially reduces the quality of the environment in this Commonwealth; ***or***

(e) Any property designed, constructed, or installed for the primary purpose of removing substances from raw materials, which substances, if permitted to become a component part of the finished product, would have a deleterious effect on the environment when the finished product was utilized**;** ~~.~~

(2) "Industrial waste" means any liquid, gaseous, or solid waste substance resulting from any process of industry, manufacture, trade, or business, or from the development, processing, or recovery of any natural resource, together with such sewage as is present, which pollutes the waters of the Commonwealth**;** ~~.~~

(3) "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining (excluding coal mining waste), and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923)**;** ~~.~~

(4) "Treatment works" means any plant, disposal field, lagoon, dam, pumping station, incinerator, or other works used for the purpose of treating, stabilizing, or holding sewage, industrial waste, or other wastes**;** ~~.~~

(5) "Water pollution" ***means***~~[shall mean]~~ the placing of any noxious or deleterious substances in any waters of the Commonwealth which render such waters harmful or inimical to aquatic life, or to the use of such waters for domestic water supply, or industrial or agricultural purposes or for recreation**;**~~[.]~~

(6) "Waters of the Commonwealth" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, which are situated wholly or partly within, or border upon, this Commonwealth, or are within its jurisdiction, except those private waters which do not combine or effect a junction with natural surface or underground waters**;**~~[.]~~

(7) "Cabinet" ***means***~~[shall mean]~~ the~~[Kentucky]~~ Energy and Environment Cabinet**;** ***and***~~[.]~~

(8) "Pollution control tax exemption certificate" ***means***~~[shall mean]~~ that certificate issued by the cabinet pursuant to KRS 224.1-310.

➔Section 3. KRS 350.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) "Surface coal mining operations" means activities conducted on the surface of lands in connection with a surface coal mine and surface impacts incident to an underground coal mine. The activities shall include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, extended depth secondary recovery systems, mountaintop removal, box cut, open pit, and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching, or other chemical or physical processing, and cleaning, concentrating, or other processing or preparation, and the loading of coal at or near the mine site. Excavation for the purpose of obtaining coal includes extraction of coal from refuse piles. The activities shall not include the extraction of coal by a landowner of fifty (50) tons or less within twelve (12) successive calendar months for his own

noncommercial use from land owned or leased by him; the extraction of twenty-five (25) to two hundred fifty (250) tons of coal as an incidental part of privately financed construction where the coal is donated to a charitable or educational organization for noncommercial use or noncommercial distribution; the extraction of coal as an incidental part of federal, state, or local government financed highway or other construction under administrative regulations established by the cabinet; the extraction of, or intent to extract, twenty-five (25) tons or less of coal by any person by surface coal mining operations within twelve (12) successive calendar months; the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent (16-2/3%) of the tonnage of minerals removed for purposes of commercial use or sale; or coal exploration subject to KRS 350.057. Surface coal mining operations shall also include the areas upon which the activities occur or where the activities disturb the natural land surface. The areas shall also include any adjacent land, the use of which is incidental to the activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of the activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface resulting from or incident to the activities. This definition shall include the terms "strip mining" of coal and the "surface effects of underground mining" of coal as used in this chapter;

(2) "Strip mining" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter; any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, and other solid matter from its original location; and the

preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use; but shall not include the extraction of coal by a landowner for his own noncommercial use of fifty (50) tons or less within twelve (12) successive calendar months from land owned or leased by him; the extraction of coal as an incidental part of federal, state, or local government financed highway or other construction under administrative regulations established by the cabinet; the extraction of, or intent to extract, twenty-five (25) tons or less of coal by any person by surface coal mining operations within twelve (12) successive calendar months; the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent (16-2/3%) of the tonnage of minerals removed for purposes of commercial use or sale; coal exploration subject to KRS 350.057; nor shall it include the surface effects or surface impacts of underground coal mining;

(3) "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incident to the reclamation of the operations as required by this chapter;

(4) "Overburden" means material of any nature, consolidated or unconsolidated, excluding topsoil, which lies above a natural deposit of coal and also means the material after removal from its natural state in the process of surface coal mining;

(5) "Area of land affected" means any area of land or water upon which surface coal mining and reclamation operations are conducted or located or are to be conducted or located;

(6) "Operations" means surface coal mining operations, all of the premises, facilities, roads, and equipment used in the process of producing coal from a designated area or removing overburden for the purpose of determining the location, quality, or quantity of a natural coal deposit or the activity to facilitate or accomplish the extraction or the removal of coal;

(7) "Method of operation" means the method or manner by which the cut or open pit is made, the overburden is placed or handled, water is controlled, and other acts are performed by the operator in the process of uncovering and removing the coal;

(8) "Operator" means any person, partnership, or corporation engaged in surface coal mining operations who removes or intends to remove more than twenty-five (25) tons of coal from the earth by coal mining within twelve (12) consecutive calendar months in any one (1) location;

(9) "Person" means any individual, partnership, corporation, association, society, joint stock company, firm, company, or other business organization and shall also include any agency, unit, or instrumentality of federal, state, or local government including any publicly-owned utility or publicly-owned corporation of federal, state, or local government;

(10) "Cabinet" means the Energy and Environment Cabinet;

(11) "Secretary" means the secretary of the Energy and Environment Cabinet;

(12) "Reclamation" means the reconditioning of the area affected by surface coal mining operations under a plan approved by the cabinet;

(13) "Degree" when used in this chapter shall mean from the horizontal, and in each case shall be subject to a tolerance of five percent (5%) of error;

(14) "Bench" means the ledge, shelf, or terrace formed in the contour method of strip mining;

(15) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted where the cabinet determines that they are in compliance with KRS 350.455;

(16) "Certification" by a qualified registered professional engineer, as required by this chapter and administrative regulations promulgated hereunder, means a good faith representation to the best of his or her knowledge and belief, based on adequate knowledge of the requirements of this chapter and administrative regulations promulgated hereunder, related experience, best professional judgment, accepted engineering practices and recognized professional standards, and standard practice as it relates to direct participation by the registered professional engineer or supervision of the registered professional engineer's employees or subordinates. Certification shall not be construed to constitute a warranty or guarantee;

(17) "Reclamation development fund" means only that reconditioning of land affected by surface mining, which will directly promote and benefit the fund administered by the Kentucky Economic Development Finance Authority to foster economic development on surface mining land;

(18) "Reclamation development project" means only that reconditioning of land affected by surface mining, which will directly promote and benefit an economic undertaking which constitutes a project under KRS 154.1-010(20);

(19) "Reclamation development plan" means a plan submitted to the cabinet to show compliance with reclamation standards, and submitted to the Kentucky Economic Development Finance Authority to seek moneys from the reclamation development fund for a reclamation development project;

(20) "Permit applicant" or "applicant" means a person applying for a permit;

(21) "Permittee" means a person holding a permit to conduct surface coal mining and reclamation operations;

(22) "Unanticipated event or condition" as used in KRS 350.085(7) means an event or condition encountered in a remining operation that was not contemplated by the applicable surface coal mining and reclamation permit;

(23) "Lands eligible for remining" means those lands that would otherwise be eligible

for expenditures under KRS 350.560(1) or (2);

(24) "Coal combustion by-products" means fly ash, bottom ash, scrubber sludge, and waste from fluidized bed combustion, produced by the combustion of coal. Coal combustion by-products do not include boiler slag, or residues of refuse derived fuels, such as municipal solid waste, tires, and solvents;

(25) "NAD 83" means the North American Datum, 1983 version, in feet units;~~[and]~~

(26) "Single Zone Projection" means the Kentucky Single Zone State Plane Coordinate System of 1983, based on the Lambert Conformal map projection with double standard parallels on the North American Datum, as established in 10 KAR 5:010**;** ***and***

(27) "Long-term treatment" means the use of any active or passive water treatment necessary to meet water quality effluent standards at the time the cabinet determines, in accordance with the administrative regulations promulgated by the cabinet relating to performance bond release, that a permittee has completed backfilling, regrading, topsoil replacement, and drainage control, including soil preparation, initial seeding, and mulching, pursuant to the approved reclamation plan, and that a report for the area has been duly submitted to the cabinet.

➔Section 4. KRS 350.060 is amended to read as follows:

(1) (a) No person shall engage in surface coal mining and reclamation operations without having first obtained from the cabinet a permit designating the area of land affected by the operation. Permits shall authorize the permittee to engage in surface coal mining and reclamation operations upon the area of land described in his application for a period not to exceed five (5) years. However, if an applicant demonstrates that a specified longer term is reasonably needed to obtain necessary financing for equipment and the opening of the operation and if the application is full and complete for the specified longer term, the cabinet may grant a permit for the longer term. No

mining shall be permitted beyond the time period obligations of the initial or extended bond coverage.

(b) Subject to the provisions of KRS 350.010(1) and (2), no person shall knowingly and willfully receive, transport, sell, convey, transfer, trade, exchange, donate, purchase, deliver, or in any way derive benefit from coal removed from any surface mining operation which does not have a permit as required under this section.

(2) No permit or revision application shall be approved unless the application affirmatively demonstrates, and the cabinet finds in writing on the basis of the information set forth in the application or from information otherwise available, that the permit application is accurate and complete and that all the requirements of this chapter have been complied with.

(3) A person desiring a permit to engage in surface coal mining operations shall file an application which shall state:

(a) The location and area of land to be affected by the operation, with a description of access to the area from the nearest public highways;

(b) The owner or owners of the surface of the area of land to be affected by the permit and the owner or owners of all surface area adjacent to any part of the affected area;

(c) The owner or owners of the coal to be mined;

(d) The source of the applicant's legal right to mine the coal on the land affected by the permit;

(e) The permanent and temporary post office addresses of the applicant, which shall be updated immediately if changed at any point prior to final bond release;

(f) Whether the applicant or any person, partnership, or corporation associated with the applicant holds or has held any other permits under this chapter, and

an identification of the permits;

(g) The names and addresses of every officer, partner, director, or person performing a function similar to a director of the applicant, together with the names and addresses of any individual owning of record ten percent (10%) or more of any class of voting stock of the applicant, and whether the applicant or any person is subject to any of the provisions of subsection (3) of KRS 350.130 and he shall so certify. The permittee shall submit updates of this information as changes occur or as otherwise provided by administrative regulation; however, failure to submit updated information shall constitute a violation of this chapter only upon the permittee's refusal or failure to timely submit the information to the cabinet upon request. Upon receipt of updated information satisfactory to the cabinet, the cabinet shall promptly update its computer system containing the information;

(h) A listing of any violations of this chapter, Public Law 95-87, and any law, rule, or regulation in effect for the protection of air or water resources incurred by the applicant in connection with any surface coal mining and reclamation operation during the three (3) year period prior to the date of an application. The list shall indicate the final resolution of the violations; and

(i) Whether the area of land to be affected by the operation has been previously mined and is in compliance with current reclamation standards, and, if not, identify the needed reclamation work.

(4) The application for a permit shall be accompanied by an official document, and an affidavit attesting to the document's authenticity, which will evidence what particular business entity the applicant is, whether a foreign or domestic corporation, a partnership, an entity doing business as another, or, if sole proprietorship, an affidavit so stating.

(5) The application for a permit shall be accompanied by copies, in numbers

satisfactory to the cabinet, of a United States Geological Survey topographic map or other map acceptable to the cabinet on which the applicant has indicated the location of the operation, the course which would be taken by drainage from the operation to the stream or streams to which the drainage would normally flow, the name of the applicant and date, and the name of the person who located the operation on the map.

(6) The application for a permit shall be accompanied by copies, in numbers satisfactory to the cabinet, of an enlarged United States Geological Survey topographic map or other map acceptable to the cabinet meeting the requirements of paragraphs (a) to (i) of this subsection. The map shall:

(a) Be prepared and certified by a professional engineer registered under the provisions of KRS Chapter 322. The certification shall be in the form as provided in subsection (8) of this section, except that the engineer shall not be required to certify the true ownership of property under paragraph (d) of this subsection;

(b) Identify the area to correspond with the application;

(c) Show adjacent deep mining;

(d) Show the boundaries of surface properties and names of owners of the affected area and adjacent to any part of the affected area;

(e) Be of a scale of 1:24,000 or larger;

(f) Show the names and locations of all streams, creeks, or other bodies of public water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected within three hundred (300) feet of an as-drilled oil or gas well, but as-drilled locations of oil and gas wells shall be certified only by a licensed surveyor and the well locations shall be entered in coordinates in feet units, using NAD 83, with Single Zone Projection, as those terms are defined in KRS 350.010;

(g) Show by appropriate markings the boundaries of the area of land affected, the cropline of the seam or deposit of coal to be mined, and the total number of acres involved in the area of land affected;

(h) Show the date on which the map was prepared, the north point, and the quadrangle name; and

(i) Show the drainage plan on and away from the area of land affected. The plan shall indicate the directional flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge.

(7) Each application shall include a determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and groundwater systems, including the dissolved and suspended solids under seasonal flow conditions, and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the cabinet of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability. This determination shall not be required until the time hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency. The permit shall not be approved until the information is available and is incorporated into the application.

(8) All certifications required by this chapter to be made by professional engineers shall be done in the form prescribed by the cabinet and shall be reasonably specific as to the work being certified. The cabinet may reject any document or map as incomplete if it is not properly certified.

(9) In addition to the information and maps required above, each application for a permit shall be accompanied by detailed plans or proposals showing the method of operation; the manner, time, and distance for backfilling; grading work; and a

reclamation plan for the affected area, which proposals shall meet the requirements of this chapter and administrative regulations adopted pursuant thereto.

(10) The application for a permit shall be accompanied by proof that the applicant has public liability insurance coverage satisfactory to the cabinet for the surface mining and reclamation operations for which the permit is sought, or proof that the applicant has satisfied self-insurance requirements as provided by administrative regulations of the cabinet. The coverage shall be maintained in full force and effect during the terms of the permit and any permit renewal, and until reclamation operations are completed.

(11) ***(a)*** A basic fee set by administrative regulation, and bearing a reasonable relationship to the cost of processing the permit application but not to exceed two thousand five hundred dollars ($2,500), plus a fee set by administrative regulation but not to exceed seventy-five dollars ($75), for each acre or fraction thereof of the area of land to be affected by the operation, shall be paid before the permit required in this section shall be issued; provided that if the cabinet approves an incremental bonding plan submitted by the applicant, the acreage fees may be paid in increments and at times corresponding to the approved plan.

(b) The applicant shall file with the cabinet a bond payable to the Commonwealth of Kentucky with surety satisfactory to the cabinet in the sum to be determined by the cabinet for each acre or fraction thereof of the area of land affected, with a minimum bond of ten thousand dollars ($10,000), conditioned upon the faithful performance of the requirements set forth in this chapter and of the administrative regulations of the cabinet. The cabinet shall forfeit the entire amount of the bond for the permit area or increment in the event of forfeiture.

(c) In determining the amount of the bond, the cabinet shall take into

consideration the***:***

1. Character and nature of the overburden;

2. ~~[the]~~Future suitable use of the land involved;

3. ~~[the]~~Cost of backfilling, grading, and reclamation to be required; and

4. ~~[the]~~Probable difficulty of reclamation, giving consideration to such factors as topography, geology, hydrology, and revegetation potential.

(d) The bond amount shall initially be computed to be sufficient to ensure completion of reclamation if the work had to be performed by the cabinet in the event of forfeiture.

(e) For any permit or permit increment identified by the cabinet as requiring long-term treatment, the cabinet shall calculate an additional bond or other financial assurance instrument amount based on the estimated annual treatment cost, provided by the permittee and verified by the cabinet, multiplied by a factor of twenty-five (25), plus any capital cost of the treatment system. The cabinet shall use its own estimate for annual treatment costs if the cabinet cannot verify the permittee's estimate.

(f) Within thirty (30) days of a cabinet determination of a need to change a bond protocol currently in use, the cabinet shall immediately promulgate administrative regulations setting forth bonding requirements, including but not limited to requirements for the amount, duration, release, and forfeiture of bonds. Bond protocols shall not be exempt from KRS 13A.100 and shall be established by promulgating administrative regulations under KRS Chapter 13A. Failure to include the formula for establishing the amount of the bond in any administrative regulation on bonding requirements shall be deemed a failure to comply with the prescriptions of this section and the administrative regulation shall automatically be declared deficient in accordance with KRS Chapter 13A.

(12) The cabinet shall promulgate administrative regulations for the permitting of operations with surface effects of underground mining and other surface coal mining and reclamation operations consistent with this section. The cabinet shall recognize the distinct differences between the surface effects of underground mining and strip mining, as also provided in KRS 350.151, in promulgating permitting requirements for these operations.

(13) Any valid permit issued pursuant to this chapter shall carry with it the right of successive renewal upon expiration with respect to areas within the boundaries of the existing permit. An applicant for renewal of a permit shall pay a basic fee set by regulation, not to exceed seven hundred fifty dollars ($750). The holders of the permit may apply for renewal and the renewal shall be issued, provided that on application for renewal the burden shall be on the opponents of renewal, subsequent to the fulfillment of the public notice requirements of this chapter, unless it is established and written findings by the cabinet are made that:

(a) The terms and conditions of the existing permit are not being satisfactorily met;

(b) The present surface coal mining and reclamation operation is not in compliance with the environmental protection standards of this chapter;

(c) The renewal requested substantially jeopardizes the applicant's continuing responsibility on existing permit areas;

(d) The applicant has not provided evidence that the performance bond in effect for the operation will continue in full force and effect for any renewal requested in the application as well as any additional bond the cabinet might require; or

(e) Any additional revised or updated information required by the cabinet has not been provided.

Prior to the approval of any renewal of permit, the cabinet shall provide notice to

the appropriate public authorities.

(14) If an application for renewal of a valid permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application for renewal of a valid permit which addresses any new areas of surface disturbance shall be subject to the full standards applicable to new applications under this chapter.

(15) Any permit renewal shall be for a term not to exceed the period of the original permit. Application for permit renewal shall be made at least one hundred twenty (120) days prior to the expiration of the valid permit.

(16) Notwithstanding any of the provisions of this section, a permit shall terminate if the permittee has not commenced the surface coal mining operations covered by the permit within three (3) years of the issuance of the permit. However, the cabinet may grant reasonable extensions of time upon a showing that the extensions are necessary by reason of litigation precluding commencement of operations, or threatening substantial economic loss to the permittee, or by reason of conditions beyond the control and without the fault or negligence of the permittee. With respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at the time the construction of the synthetic fuel or generating facility is initiated.

(17) Each application for a permit or revision for auger mining on a previously mined area shall contain information to describe the area to be affected, to show that the proposed method of operation will result in stable post-mining conditions, and reduce or eliminate adverse environmental conditions created by previous mining activities. If the cabinet determines that the affected area cannot be stabilized and reclaimed subsequent to augering or that the operation will result in an adverse impact to the proposed or adjacent area, the permit or revision shall not be issued.

The cabinet shall, consistent with all applicable requirements of this chapter, issue a permit or revision if the applicant demonstrates that the proposed coal mining operations will provide for reduction or elimination of the highwall, or reduction or abatement of adverse impacts resulting from past mining activities, or stabilization or enhancement of a previously mined area. The cabinet shall insure that all reasonably available spoil material will be used to backfill the highwall to the extent practical and feasible; provided, however, that in all cases the holes be properly sealed and backfilled to a minimum of four (4) feet above the coal seam being mined.

(18) All operations involving the loading of coal which do not separate the coal from its impurities, and which are not located at or near the mine site, shall be exempt from the requirements of this chapter.

➔Section 5. Whereas it is critical to the orderly administration of the Commonwealth's environmental protection laws that waters be properly defined, and critical to the health and safety of the citizens of the Commonwealth that appropriate financial assurance be obtained to address long-term post-mining water discharges in the event of operator default, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.