

1 AN ACT relating to environmental protection and declaring an emergency.

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

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

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

- 5 (1) "Air contaminant" includes smoke, dust, soot, grime, carbon, or any other  
6 particulate matter, radioactive matter, noxious acids, fumes, gases, odor, vapor, or  
7 any combination thereof;
- 8 (2) "Air contaminant source" means any and all sources of emission of air  
9 contaminants, whether privately or publicly owned or operated. Without limiting  
10 the generality of the foregoing, this term includes all types of business, commercial  
11 and industrial plants, works, shops, and stores, and heating and power plants and  
12 stations, buildings and other structures of all types, including single and multiple  
13 family residences, apartments, houses, office buildings, public buildings, hotels,  
14 restaurants, schools, hospitals, churches, and other institutional buildings,  
15 automobiles, trucks, tractors, buses and other motor vehicles, garages and vending  
16 and service locations and stations, railroad locomotives, ships, boats and other  
17 waterborne craft, portable fuel-burning equipment, incinerators of all types (indoor  
18 and outdoor), refuse dumps and piles, and all stack and other chimney outlets from  
19 any of the foregoing;
- 20 (3) "Air pollution" means the presence in the outdoor atmosphere of one (1) or more air  
21 contaminants in sufficient quantities and of such characteristics and duration as is or  
22 threatens to be injurious to human, plant, or animal life, or to property, or which  
23 unreasonably interferes with the comfortable enjoyment of life or property;
- 24 (4) "Closure" means the time at which a waste treatment, storage, or disposal facility  
25 permanently ceases to accept wastes, and includes those actions taken by the owner  
26 or operator of the facility to prepare the site for post-closure monitoring and  
27 maintenance or to make it suitable for other uses;

- 1 (5) "Compost" means solid waste which has undergone biological decomposition of  
2 organic matter, been disinfected using composting or similar technologies, been  
3 stabilized to a degree which is potentially beneficial to plant growth and which is  
4 approved for use or sale as a soil amendment, artificial topsoil, growing medium  
5 amendment, or other similar uses;
- 6 (6) "Composting" means the process by which biological decomposition of organic  
7 solid waste is carried out under controlled aerobic conditions, and which stabilizes  
8 the organic fraction into a material which can easily and safely be stored, handled,  
9 and used in an environmentally acceptable manner:
- 10 (a) "Composting" may include a process which creates an anaerobic zone within  
11 the composting material;
- 12 (b) "Composting" does not include simple exposure of solid waste under  
13 uncontrolled conditions resulting in natural decay;
- 14 (7) "Demonstration" means the initial exhibition of a new technology, process or  
15 practice or a significantly new combination or use of technologies, processes or  
16 practices, subsequent to the development stage, for the purpose of proving  
17 technological feasibility and cost effectiveness;
- 18 (8) "Cabinet" means the Energy and Environment Cabinet;
- 19 (9) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or  
20 placing of any waste into or on any land or water so that such waste or any  
21 constituent thereof may enter the environment or be emitted into the air or  
22 discharged into any waters, including ground waters;
- 23 (10) "District" means an air pollution control district as provided for in KRS Chapter 77;
- 24 (11) "Effluent limitations" means any restrictions or prohibitions established under state  
25 law which include, but are not limited to, effluent limitations, standards of  
26 performance for new sources, and toxic effluent standards on quantities, rates, and  
27 concentrations of chemical, physical, biological, and other constituents which are

- 1 discharged into waters;
- 2 (12) "Generator" means any person, by site, whose act or process produces waste;
- 3 (13) "Materials recovery facility" means a solid waste management facility that provides  
4 for the extraction from solid waste of recyclable materials, materials suitable for use  
5 as a fuel or soil amendment, or any combination of those materials;
- 6 (14) "Municipal solid waste disposal facility" means any type of waste site or facility  
7 where the final deposition of any amount of municipal solid waste occurs, whether  
8 or not mixed with or including other waste allowed under Subtitle D of the Federal  
9 Resource Conservation and Recovery Act of 1976, as amended, and includes but is  
10 not limited to incinerators and waste-to-energy facilities that burn municipal solid  
11 waste and contained and residential landfills, but does not include an advanced  
12 recycling facility or a waste site or facility which is operated exclusively by a solid  
13 waste generator on property owned by the solid waste generator which accepts only  
14 industrial solid waste from the solid waste generator or industrial solid waste  
15 generated at another facility owned and operated by the generator or wholly-owned  
16 subsidiary, or a medical waste incinerator which is owned, operated, and located on  
17 the property of a hospital or university which is regulated by the cabinet and used  
18 for the purpose of treatment, prior to landfill, of medical waste received from the  
19 generator exclusively or in combination with medical waste generated by  
20 professionals or facilities licensed or regulated or operated by the Commonwealth;
- 21 (15) "Municipal solid waste reduction" means source reduction, waste minimization,  
22 reuse, recycling, composting, and materials recovery;
- 23 (16) "Person" means an individual, trust, firm, joint stock company, corporation  
24 (including a government corporation), partnership, association, federal agency, state  
25 agency, city, commission, political subdivision of the Commonwealth, or any  
26 interstate body;
- 27 (17) "Post-closure monitoring and maintenance" means the routine care, maintenance,

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

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

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

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

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

- 1 not include the incineration or combustion of materials for the recovery of energy;
- 2 (22) "Refuse-derived fuel" means a sized, processed fuel product derived from the  
3 extensive separation of municipal solid waste, which includes the extraction of  
4 recoverable materials for recycling and the removal of nonprocessables such as dirt  
5 and gravel prior to processing the balance of the municipal solid waste into the  
6 refuse-derived fuel product;
- 7 (23) "Secretary" means the secretary of the Energy and Environment Cabinet;
- 8 (24) "Sewage system" means individually or collectively those constructions or devices  
9 used for collecting, pumping, treating, and disposing of liquid or waterborne  
10 sewage, industrial wastes, or other wastes;
- 11 (25) "Termination" means the final actions taken by the cabinet as to a solid waste or  
12 hazardous waste treatment, storage, or disposal facility when formal responsibilities  
13 for post-closure monitoring and maintenance cease;
- 14 (26) "Waste site or facility" means any place where waste is managed, processed, or  
15 disposed of by incineration, landfilling, or any other method, but does not include a  
16 container located on property where solid waste is generated and which is used  
17 solely for the purpose of collection and temporary storage of that solid waste prior  
18 to off-site disposal, or a recovered material processing facility, or an advanced  
19 recycling facility, or the combustion of processed waste in a utility boiler;
- 20 (27) "Storage" means the containment of wastes, either on a temporary basis or for a  
21 period of years, in such a manner as not to constitute disposal of such wastes;
- 22 (28) "Transportation" means any off-site movement of waste by any mode, and any  
23 loading, unloading, or storage incidental thereto;
- 24 (29) "Treatment" means any method, technique, or process, including neutralization,  
25 designed to change the physical, chemical, or biological character or composition of  
26 any waste so as to neutralize such waste or so as to render such waste  
27 nonhazardous, safer for transport, amenable for recovery, amenable for storage, or

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

4 (30) "Waste" means:

5 (a) "Solid waste" means any garbage, refuse, sludge, and other discarded  
6 material, including solid, liquid, semi-solid, or contained gaseous material  
7 resulting from industrial, commercial, mining (excluding coal mining wastes,  
8 coal mining by-products, refuse, and overburden), agricultural operations, and  
9 from community activities, but does not include those materials including, but  
10 not limited to, sand, soil, rock, gravel, or bridge debris extracted as part of a  
11 public road construction project funded wholly or in part with state funds,  
12 recovered material, post-use polymers or recovered feedstocks, tire-derived  
13 fuel, special wastes as designated by KRS 224.50-760, solid or dissolved  
14 material in domestic sewage, manure, crops, crop residue, or a combination  
15 thereof which are placed on the soil for return to the soil as fertilizers or soil  
16 conditioners, or solid or dissolved material in irrigation return flows or  
17 industrial discharges which are point sources subject to permits under Section  
18 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or  
19 source, special nuclear, or by-product material as defined by the Atomic  
20 Energy Act of 1954, as amended (68 Stat. 923):

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

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

- 1 nonmanufacturing activities, excluding tire-derived fuel and household  
2 and industrial solid waste;
- 3 3. "Industrial solid waste" means solid waste generated by manufacturing  
4 or industrial processes that is not a hazardous waste or a special waste as  
5 designated by KRS 224.50-760, including but not limited to waste  
6 resulting from the following manufacturing processes: electric power  
7 generation; fertilizer or agricultural chemicals; food and related products  
8 or by-products; inorganic chemicals; iron and steel manufacturing;  
9 leather and leather products; nonferrous metals  
10 manufacturing/foundries; organic chemicals; plastics and resins  
11 manufacturing; pulp and paper industry; rubber and miscellaneous  
12 plastic products, except tire-derived fuel; stone, glass, clay, and concrete  
13 products; textile manufacturing; transportation equipment; and water  
14 treatment; and
- 15 4. "Municipal solid waste" means household solid waste and commercial  
16 solid waste; and
- 17 (b) "Hazardous waste" means any discarded material or material intended to be  
18 discarded or substance or combination of such substances intended to be  
19 discarded, in any form which because of its quantity, concentration or  
20 physical, chemical or infectious characteristics may cause, or significantly  
21 contribute to an increase in mortality or an increase in serious irreversible, or  
22 incapacitating reversible, illness or pose a substantial present or potential  
23 hazard to human health or the environment when improperly treated, stored,  
24 transported, or disposed of, or otherwise managed;
- 25 (31) "Waste management district" means any county or group of counties electing to  
26 form under the provisions of KRS Chapter 109 and operate in conformance with the  
27 provisions of KRS Chapter 109 and with Section 4006, Resource Conservation and

- 1 Recovery Act of 1976, as amended (Public Law 94-580);
- 2 (32) "Water" or "waters of the Commonwealth" means and includes *navigable waters,*  
3 *as defined in 33 U.S.C. sec. 1362, that are*~~[any and all rivers, streams, creeks,~~  
4 ~~lakes, ponds, impounding reservoirs, springs, wells, marshes, and all other bodies of~~  
5 ~~surface or underground water, natural or artificial,]~~ situated wholly or partly within  
6 or bordering upon the Commonwealth or within its jurisdiction;
- 7 (33) "Water pollution" means the alteration of the physical, thermal, chemical,  
8 biological, or radioactive properties of the waters of the Commonwealth in such a  
9 manner, condition, or quantity that will be detrimental to the public health or  
10 welfare, to animal or aquatic life or marine life, to the use of such waters as present  
11 or future sources of public water supply or to the use of such waters for  
12 recreational, commercial, industrial, agricultural, or other legitimate purposes;
- 13 (34) "Pollutant" means and includes dredged spoil, solid waste, incinerator residue,  
14 sewage, sewage sludge, garbage, chemical, biological or radioactive materials, heat,  
15 wrecked or discarded equipment, rock, sand, soil, industrial, municipal or  
16 agricultural waste, and any substance resulting from the development, processing,  
17 or recovery of any natural resource which may be discharged into water;
- 18 (35) "NPDES" means National Pollutant Discharge Elimination System;
- 19 (36) "Manifest" means the form used for identifying the quantity, composition, and the  
20 origin, routing, and destination of waste during its transportation from the point of  
21 generation to the point of disposal, treatment, or storage;
- 22 (37) "Open dump" means any facility or site for the disposal of solid waste which does  
23 not have a valid permit issued by the cabinet or does not meet the environmental  
24 performance standards established under regulations promulgated by the cabinet;
- 25 (38) "Solid waste management" means the administration of solid waste activities:  
26 collection, storage, transportation, transfer, processing, treatment, and disposal,  
27 which shall be in accordance with a cabinet-approved county or multicounty solid

- 1 waste management plan;
- 2 (39) "Solid waste management area" or "area" means any geographical area established  
3 or designated by the cabinet in accordance with the provisions of this chapter;
- 4 (40) "Solid waste management facility" means any facility for collection, storage,  
5 transportation, transfer, processing, treatment, or disposal of solid waste, whether  
6 such facility is associated with facilities generating such wastes or otherwise, but  
7 does not include a container located on property where solid waste is generated and  
8 which is used solely for the purpose of collection and temporary storage of that  
9 solid waste prior to off-site disposal, or a recovered material processing facility or  
10 advanced recycling facility, both of which are otherwise subject to regulation  
11 pursuant to this chapter for control of environmental impacts and to prevent any  
12 public nuisance;
- 13 (41) "Hazardous constituent" shall conform to the requirements of the Resource  
14 Conservation and Recovery Act (RCRA), as amended;
- 15 (42) "Land disposal" includes but is not limited to any placement of hazardous waste in  
16 a landfill, surface impoundment, waste pile, injection well, land treatment facility,  
17 salt dome formation, salt bed formation, or underground mine or cave;
- 18 (43) "Key personnel" means an officer, partner, director, manager, or shareholder of five  
19 percent (5%) or more of stock or financial interest in a corporation, partnership, or  
20 association or parent, subsidiary, or affiliate corporation and its officers, directors,  
21 or shareholders of five percent (5%) or more of stock or financial interest;
- 22 (44) "Universal collection" means a municipal solid waste collection system which is  
23 established by ordinance and approved by the cabinet and requires access for each  
24 household or solid waste generator in a county. A commercial or industrial entity  
25 which transports or contracts for the transport of the municipal solid waste it  
26 generates or which operates a solid waste management facility for its exclusive use  
27 may be excluded from participation;

- 1 (45) "Governing body" means a county, a waste management district, an entity created  
2 pursuant to the Interlocal Cooperation Act, a taxing district created pursuant to the  
3 provisions of KRS 65.180 to 65.192, a special district created pursuant to the  
4 provisions of KRS 65.160 to 65.176, or counties acting under contract pursuant to  
5 KRS 109.082;
- 6 (46) "Convenience center" means a facility that is manned during operating hours for the  
7 collection and subsequent transportation of municipal solid wastes;
- 8 (47) "Transfer facility" means any transportation related facility including loading  
9 docks, parking areas, and other similar areas where shipments of solid waste are  
10 held or transferred during the normal course of transportation;
- 11 (48) "Collection box" means an unmanned receptacle utilized to collect municipal solid  
12 waste;
- 13 (49) "Newsprint" means that class or kind of paper chiefly used for printing newspapers  
14 and weighing more than twenty-four and one-half (24 1/2) pounds, but less than  
15 thirty-five (35) pounds for five hundred (500) sheets of paper two (2) feet by three  
16 (3) feet in size, on rolls that are not less than thirteen (13) inches wide and twenty-  
17 eight (28) inches in diameter and having a brightness of less than sixty (60);
- 18 (50) "Postconsumer waste paper" means discarded paper after it has served its intended  
19 use by a publisher;
- 20 (51) "Publisher" means a person engaged in the business of publishing newspapers,  
21 advertisement flyers, telephone books, and other printed material;
- 22 (52) "Recycled content" means the proportion of fiber in newsprint that is derived from  
23 postconsumer waste paper;
- 24 (53) "Tire-derived fuel" or "TDF" means a product made from waste tires to the exact  
25 specifications of a system designed to accept tire-derived fuel as a primary or  
26 supplemental fuel source, that have been reduced to particle sizes not greater than  
27 two (2) inches by two (2) inches and that is destined for transportation from the

1 waste tire processor for use as a fuel. "Tire-derived fuel" shall not mean refuse-  
2 derived fuel;

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

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

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

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

21 (58) "Gasification" means a process through which post-use polymers and recovered  
22 feedstocks are heated and converted into a fuel and gas mixture in an oxygen-  
23 deficient atmosphere, and then converted into raw, intermediate, and final products;

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

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

27 (b) Is not mixed with solid waste or hazardous waste on-site or during processing

1 at the advanced recycling facility;

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

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

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

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

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

- 16 1. Post-use polymers; and  
17 2. Materials for which the United States Environmental Protection Agency  
18 has made a nonwaste determination pursuant to applicable federal  
19 requirements or has otherwise determined are feedstocks and not solid  
20 waste.

21 (b) "Recovered feedstock" does not include:

- 22 1. Unprocessed municipal solid waste; or  
23 2. Material that is mixed with solid waste or hazardous waste on-site or  
24 during processing at an advanced recycling facility; and

25 (62) "Solvolysis" means a manufacturing process through which post-use polymers are  
26 purified with the aid of solvents while heated at low temperatures or pressurized to  
27 make raw materials, intermediate products, or final products, while allowing

1 additives and contaminants to be removed. "Solvolysis" includes but is not limited  
2 to hydrolysis, aminolysis, ammonolysis, methanolysis, and glycolysis.

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

4 ~~{(1)} For purposes of KRS 224.1-300 and 224.1-310 only;{}~~

5 **(1)** "Pollution control facility" **means and includes**~~{shall mean and include}~~:

- 6 (a) Any property designed, constructed, or installed as a component part of any  
7 commercial or industrial premises for the primary purpose of eliminating or  
8 reducing the emission of, or ground level concentration of, particulate matter,  
9 dust, fumes, gas, mist, smoke, vapor, or odorous substances, or any  
10 combination thereof which renders air harmful or inimical to the health of  
11 persons or to property within this Commonwealth;
- 12 (b) Any disposal system or any treatment works, pretreatment works, appliance,  
13 equipment, machinery, or installation constructed, used, or placed in operation  
14 primarily for the purpose of reducing, controlling, or eliminating thermal  
15 pollution or water pollution caused by industrial waste, or what would be  
16 industrial waste, if discharged into the waters of the Commonwealth;
- 17 (c) Any disposal system or any appliance, equipment, machinery or installation  
18 constructed, used or placed in operation primarily for disposing of waste,  
19 converting waste into an item of real economic value or converting hazardous  
20 waste to nonhazardous waste;
- 21 (d) Any property designed, constructed, or installed as a component part of any  
22 commercial or industrial premises for the primary purpose of eliminating or  
23 reducing the emission of sound which is harmful or inimical to the health of  
24 persons or to property, or materially reduces the quality of the environment in  
25 this Commonwealth; **or**
- 26 (e) Any property designed, constructed, or installed for the primary purpose of  
27 removing substances from raw materials, which substances, if permitted to

1           become a component part of the finished product, would have a deleterious  
2           effect on the environment when the finished product was utilized;[-]

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

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

17 (4) "Treatment works" means any plant, disposal field, lagoon, dam, pumping station,  
18          incinerator, or other works used for the purpose of treating, stabilizing, or holding  
19          sewage, industrial waste, or other wastes;[-]

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

24 (6) "Waters of the Commonwealth" means all streams, lakes, ponds, marshes,  
25          watercourses, waterways, wells, springs, irrigation systems, drainage systems, and  
26          all other bodies or accumulations of water, surface and underground, natural or  
27          artificial, which are situated wholly or partly within, or border upon, this

1 Commonwealth, or are within its jurisdiction, except those private waters which do  
2 not combine or effect a junction with natural surface or underground waters;[-]

3 (7) "Cabinet" means[~~shall mean~~] the[-~~Kentucky~~] Energy and Environment Cabinet;[-]  
4 and[-]

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

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

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

9 (1) "Surface coal mining operations" means activities conducted on the surface of lands  
10 in connection with a surface coal mine and surface impacts incident to an  
11 underground coal mine. The activities shall include excavation for the purpose of  
12 obtaining coal, including such common methods as contour, strip, auger, extended  
13 depth secondary recovery systems, mountaintop removal, box cut, open pit, and  
14 area mining, the use of explosives and blasting, and in situ distillation or retorting,  
15 leaching, or other chemical or physical processing, and cleaning, concentrating, or  
16 other processing or preparation, and the loading of coal at or near the mine site.  
17 Excavation for the purpose of obtaining coal includes extraction of coal from refuse  
18 piles. The activities shall not include the extraction of coal by a landowner of fifty  
19 (50) tons or less within twelve (12) successive calendar months for his own  
20 noncommercial use from land owned or leased by him; the extraction of twenty-five  
21 (25) to two hundred fifty (250) tons of coal as an incidental part of privately  
22 financed construction where the coal is donated to a charitable or educational  
23 organization for noncommercial use or noncommercial distribution; the extraction  
24 of coal as an incidental part of federal, state, or local government financed highway  
25 or other construction under administrative regulations established by the cabinet;  
26 the extraction of, or intent to extract, twenty-five (25) tons or less of coal by any  
27 person by surface coal mining operations within twelve (12) successive calendar

1 months; the extraction of coal incidental to the extraction of other minerals where  
2 coal does not exceed sixteen and two-thirds percent (16-2/3%) of the tonnage of  
3 minerals removed for purposes of commercial use or sale; or coal exploration  
4 subject to KRS 350.057. Surface coal mining operations shall also include the areas  
5 upon which the activities occur or where the activities disturb the natural land  
6 surface. The areas shall also include any adjacent land, the use of which is  
7 incidental to the activities, all lands affected by the construction of new roads or the  
8 improvement or use of existing roads to gain access to the site of the activities and  
9 for haulage, and excavations, workings, impoundments, dams, ventilation shafts,  
10 entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm  
11 banks, tailings, holes or depressions, repair areas, storage areas, processing areas,  
12 shipping areas, and other areas upon which are sited structures, facilities, or other  
13 property or materials on the surface resulting from or incident to the activities. This  
14 definition shall include the terms "strip mining" of coal and the "surface effects of  
15 underground mining" of coal as used in this chapter;

16 (2) "Strip mining" means the breaking of the surface soil in order to facilitate or  
17 accomplish the extraction or removal of minerals, ores, or other solid matter; any  
18 activity or process constituting all or part of a process for the extraction or removal  
19 of minerals, ores, and other solid matter from its original location; and the  
20 preparation, washing, cleaning, or other treatment of minerals, ores, or other solid  
21 matter so as to make them suitable for commercial, industrial, or construction use;  
22 but shall not include the extraction of coal by a landowner for his own  
23 noncommercial use of fifty (50) tons or less within twelve (12) successive calendar  
24 months from land owned or leased by him; the extraction of coal as an incidental  
25 part of federal, state, or local government financed highway or other construction  
26 under administrative regulations established by the cabinet; the extraction of, or  
27 intent to extract, twenty-five (25) tons or less of coal by any person by surface coal

- 1 mining operations within twelve (12) successive calendar months; the extraction of  
2 coal incidental to the extraction of other minerals where coal does not exceed  
3 sixteen and two-thirds percent (16-2/3%) of the tonnage of minerals removed for  
4 purposes of commercial use or sale; coal exploration subject to KRS 350.057; nor  
5 shall it include the surface effects or surface impacts of underground coal mining;
- 6 (3) "Surface coal mining and reclamation operations" means surface coal mining  
7 operations and all activities necessary and incident to the reclamation of the  
8 operations as required by this chapter;
- 9 (4) "Overburden" means material of any nature, consolidated or unconsolidated,  
10 excluding topsoil, which lies above a natural deposit of coal and also means the  
11 material after removal from its natural state in the process of surface coal mining;
- 12 (5) "Area of land affected" means any area of land or water upon which surface coal  
13 mining and reclamation operations are conducted or located or are to be conducted  
14 or located;
- 15 (6) "Operations" means surface coal mining operations, all of the premises, facilities,  
16 roads, and equipment used in the process of producing coal from a designated area  
17 or removing overburden for the purpose of determining the location, quality, or  
18 quantity of a natural coal deposit or the activity to facilitate or accomplish the  
19 extraction or the removal of coal;
- 20 (7) "Method of operation" means the method or manner by which the cut or open pit is  
21 made, the overburden is placed or handled, water is controlled, and other acts are  
22 performed by the operator in the process of uncovering and removing the coal;
- 23 (8) "Operator" means any person, partnership, or corporation engaged in surface coal  
24 mining operations who removes or intends to remove more than twenty-five (25)  
25 tons of coal from the earth by coal mining within twelve (12) consecutive calendar  
26 months in any one (1) location;
- 27 (9) "Person" means any individual, partnership, corporation, association, society, joint

- 1 stock company, firm, company, or other business organization and shall also  
2 include any agency, unit, or instrumentality of federal, state, or local government  
3 including any publicly-owned utility or publicly-owned corporation of federal,  
4 state, or local government;
- 5 (10) "Cabinet" means the Energy and Environment Cabinet;
- 6 (11) "Secretary" means the secretary of the Energy and Environment Cabinet;
- 7 (12) "Reclamation" means the reconditioning of the area affected by surface coal mining  
8 operations under a plan approved by the cabinet;
- 9 (13) "Degree" when used in this chapter shall mean from the horizontal, and in each case  
10 shall be subject to a tolerance of five percent (5%) of error;
- 11 (14) "Bench" means the ledge, shelf, or terrace formed in the contour method of strip  
12 mining;
- 13 (15) "Approximate original contour" means that surface configuration achieved by  
14 backfilling and grading of the mined area so that the reclaimed area, including any  
15 terracing or access roads, closely resembles the general surface configuration of the  
16 land prior to mining and blends into and complements the drainage pattern of the  
17 surrounding terrain, with all highwalls and spoil piles eliminated; water  
18 impoundments may be permitted where the cabinet determines that they are in  
19 compliance with KRS 350.455;
- 20 (16) "Certification" by a qualified registered professional engineer, as required by this  
21 chapter and administrative regulations promulgated hereunder, means a good faith  
22 representation to the best of his or her knowledge and belief, based on adequate  
23 knowledge of the requirements of this chapter and administrative regulations  
24 promulgated hereunder, related experience, best professional judgment, accepted  
25 engineering practices and recognized professional standards, and standard practice  
26 as it relates to direct participation by the registered professional engineer or  
27 supervision of the registered professional engineer's employees or subordinates.

- 1 Certification shall not be construed to constitute a warranty or guarantee;
- 2 (17) "Reclamation development fund" means only that reconditioning of land affected  
3 by surface mining, which will directly promote and benefit the fund administered  
4 by the Kentucky Economic Development Finance Authority to foster economic  
5 development on surface mining land;
- 6 (18) "Reclamation development project" means only that reconditioning of land affected  
7 by surface mining, which will directly promote and benefit an economic  
8 undertaking which constitutes a project under KRS 154.1-010(20);
- 9 (19) "Reclamation development plan" means a plan submitted to the cabinet to show  
10 compliance with reclamation standards, and submitted to the Kentucky Economic  
11 Development Finance Authority to seek moneys from the reclamation development  
12 fund for a reclamation development project;
- 13 (20) "Permit applicant" or "applicant" means a person applying for a permit;
- 14 (21) "Permittee" means a person holding a permit to conduct surface coal mining and  
15 reclamation operations;
- 16 (22) "Unanticipated event or condition" as used in KRS 350.085(7) means an event or  
17 condition encountered in a remining operation that was not contemplated by the  
18 applicable surface coal mining and reclamation permit;
- 19 (23) "Lands eligible for remining" means those lands that would otherwise be eligible  
20 for expenditures under KRS 350.560(1) or (2);
- 21 (24) "Coal combustion by-products" means fly ash, bottom ash, scrubber sludge, and  
22 waste from fluidized bed combustion, produced by the combustion of coal. Coal  
23 combustion by-products do not include boiler slag, or residues of refuse derived  
24 fuels, such as municipal solid waste, tires, and solvents;
- 25 (25) "NAD 83" means the North American Datum, 1983 version, in feet units;~~and~~
- 26 (26) "Single Zone Projection" means the Kentucky Single Zone State Plane Coordinate  
27 System of 1983, based on the Lambert Conformal map projection with double

1 standard parallels on the North American Datum, as established in 10 KAR 5:010;

2 and

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

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

11 (1) (a) No person shall engage in surface coal mining and reclamation operations  
12 without having first obtained from the cabinet a permit designating the area of  
13 land affected by the operation. Permits shall authorize the permittee to engage  
14 in surface coal mining and reclamation operations upon the area of land  
15 described in his application for a period not to exceed five (5) years.  
16 However, if an applicant demonstrates that a specified longer term is  
17 reasonably needed to obtain necessary financing for equipment and the  
18 opening of the operation and if the application is full and complete for the  
19 specified longer term, the cabinet may grant a permit for the longer term. No  
20 mining shall be permitted beyond the time period obligations of the initial or  
21 extended bond coverage.

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

27 (2) No permit or revision application shall be approved unless the application

1 affirmatively demonstrates, and the cabinet finds in writing on the basis of the  
2 information set forth in the application or from information otherwise available, that  
3 the permit application is accurate and complete and that all the requirements of this  
4 chapter have been complied with.

- 5 (3) A person desiring a permit to engage in surface coal mining operations shall file an  
6 application which shall state:
- 7 (a) The location and area of land to be affected by the operation, with a  
8 description of access to the area from the nearest public highways;
  - 9 (b) The owner or owners of the surface of the area of land to be affected by the  
10 permit and the owner or owners of all surface area adjacent to any part of the  
11 affected area;
  - 12 (c) The owner or owners of the coal to be mined;
  - 13 (d) The source of the applicant's legal right to mine the coal on the land affected  
14 by the permit;
  - 15 (e) The permanent and temporary post office addresses of the applicant, which  
16 shall be updated immediately if changed at any point prior to final bond  
17 release;
  - 18 (f) Whether the applicant or any person, partnership, or corporation associated  
19 with the applicant holds or has held any other permits under this chapter, and  
20 an identification of the permits;
  - 21 (g) The names and addresses of every officer, partner, director, or person  
22 performing a function similar to a director of the applicant, together with the  
23 names and addresses of any individual owning of record ten percent (10%) or  
24 more of any class of voting stock of the applicant, and whether the applicant  
25 or any person is subject to any of the provisions of subsection (3) of KRS  
26 350.130 and he shall so certify. The permittee shall submit updates of this  
27 information as changes occur or as otherwise provided by administrative

- 1 regulation; however, failure to submit updated information shall constitute a  
2 violation of this chapter only upon the permittee's refusal or failure to timely  
3 submit the information to the cabinet upon request. Upon receipt of updated  
4 information satisfactory to the cabinet, the cabinet shall promptly update its  
5 computer system containing the information;
- 6 (h) A listing of any violations of this chapter, Public Law 95-87, and any law,  
7 rule, or regulation in effect for the protection of air or water resources  
8 incurred by the applicant in connection with any surface coal mining and  
9 reclamation operation during the three (3) year period prior to the date of an  
10 application. The list shall indicate the final resolution of the violations; and
- 11 (i) Whether the area of land to be affected by the operation has been previously  
12 mined and is in compliance with current reclamation standards, and, if not,  
13 identify the needed reclamation work.
- 14 (4) The application for a permit shall be accompanied by an official document, and an  
15 affidavit attesting to the document's authenticity, which will evidence what  
16 particular business entity the applicant is, whether a foreign or domestic  
17 corporation, a partnership, an entity doing business as another, or, if sole  
18 proprietorship, an affidavit so stating.
- 19 (5) The application for a permit shall be accompanied by copies, in numbers  
20 satisfactory to the cabinet, of a United States Geological Survey topographic map or  
21 other map acceptable to the cabinet on which the applicant has indicated the  
22 location of the operation, the course which would be taken by drainage from the  
23 operation to the stream or streams to which the drainage would normally flow, the  
24 name of the applicant and date, and the name of the person who located the  
25 operation on the map.
- 26 (6) The application for a permit shall be accompanied by copies, in numbers  
27 satisfactory to the cabinet, of an enlarged United States Geological Survey

1 topographic map or other map acceptable to the cabinet meeting the requirements of  
2 paragraphs (a) to (i) of this subsection. The map shall:

- 3 (a) Be prepared and certified by a professional engineer registered under the  
4 provisions of KRS Chapter 322. The certification shall be in the form as  
5 provided in subsection (8) of this section, except that the engineer shall not be  
6 required to certify the true ownership of property under paragraph (d) of this  
7 subsection;
- 8 (b) Identify the area to correspond with the application;
- 9 (c) Show adjacent deep mining;
- 10 (d) Show the boundaries of surface properties and names of owners of the  
11 affected area and adjacent to any part of the affected area;
- 12 (e) Be of a scale of 1:24,000 or larger;
- 13 (f) Show the names and locations of all streams, creeks, or other bodies of public  
14 water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the  
15 area of land affected within three hundred (300) feet of an as-drilled oil or gas  
16 well, but as-drilled locations of oil and gas wells shall be certified only by a  
17 licensed surveyor and the well locations shall be entered in coordinates in feet  
18 units, using NAD 83, with Single Zone Projection, as those terms are defined  
19 in KRS 350.010;
- 20 (g) Show by appropriate markings the boundaries of the area of land affected, the  
21 cropline of the seam or deposit of coal to be mined, and the total number of  
22 acres involved in the area of land affected;
- 23 (h) Show the date on which the map was prepared, the north point, and the  
24 quadrangle name; and
- 25 (i) Show the drainage plan on and away from the area of land affected. The plan  
26 shall indicate the directional flow of water, constructed drainways, natural  
27 waterways used for drainage, and the streams or tributaries receiving the

1 discharge.

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

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

17 (9) In addition to the information and maps required above, each application for a  
18 permit shall be accompanied by detailed plans or proposals showing the method of  
19 operation; the manner, time, and distance for backfilling; grading work; and a  
20 reclamation plan for the affected area, which proposals shall meet the requirements  
21 of this chapter and administrative regulations adopted pursuant thereto.

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

1 operations are completed.

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

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

19 (c) In determining the amount of the bond, the cabinet shall take into  
20 consideration the:

- 21 1. Character and nature of the overburden;
- 22 2. ~~the~~ Future suitable use of the land involved;
- 23 3. ~~the~~ Cost of backfilling, grading, and reclamation to be required; and
- 24 4. ~~the~~ Probable difficulty of reclamation, giving consideration to such  
25 factors as topography, geology, hydrology, and revegetation potential.

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

1 the event of forfeiture.

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

9 (f) Within thirty (30) days of a cabinet determination of a need to change a bond  
10 protocol currently in use, the cabinet shall immediately promulgate  
11 administrative regulations setting forth bonding requirements, including but  
12 not limited to requirements for the amount, duration, release, and forfeiture of  
13 bonds. Bond protocols shall not be exempt from KRS 13A.100 and shall be  
14 established by promulgating administrative regulations under KRS Chapter  
15 13A. Failure to include the formula for establishing the amount of the bond in  
16 any administrative regulation on bonding requirements shall be deemed a  
17 failure to comply with the prescriptions of this section and the administrative  
18 regulation shall automatically be declared deficient in accordance with KRS  
19 Chapter 13A.

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

26 (13) Any valid permit issued pursuant to this chapter shall carry with it the right of  
27 successive renewal upon expiration with respect to areas within the boundaries of

1 the existing permit. An applicant for renewal of a permit shall pay a basic fee set by  
2 regulation, not to exceed seven hundred fifty dollars (\$750). The holders of the  
3 permit may apply for renewal and the renewal shall be issued, provided that on  
4 application for renewal the burden shall be on the opponents of renewal, subsequent  
5 to the fulfillment of the public notice requirements of this chapter, unless it is  
6 established and written findings by the cabinet are made that:

- 7 (a) The terms and conditions of the existing permit are not being satisfactorily  
8 met;
- 9 (b) The present surface coal mining and reclamation operation is not in  
10 compliance with the environmental protection standards of this chapter;
- 11 (c) The renewal requested substantially jeopardizes the applicant's continuing  
12 responsibility on existing permit areas;
- 13 (d) The applicant has not provided evidence that the performance bond in effect  
14 for the operation will continue in full force and effect for any renewal  
15 requested in the application as well as any additional bond the cabinet might  
16 require; or
- 17 (e) Any additional revised or updated information required by the cabinet has not  
18 been provided.

19 Prior to the approval of any renewal of permit, the cabinet shall provide notice to  
20 the appropriate public authorities.

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

26 (15) Any permit renewal shall be for a term not to exceed the period of the original  
27 permit. Application for permit renewal shall be made at least one hundred twenty

1 (120) days prior to the expiration of the valid permit.

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

13 (17) Each application for a permit or revision for auger mining on a previously mined  
14 area shall contain information to describe the area to be affected, to show that the  
15 proposed method of operation will result in stable post-mining conditions, and  
16 reduce or eliminate adverse environmental conditions created by previous mining  
17 activities. If the cabinet determines that the affected area cannot be stabilized and  
18 reclaimed subsequent to augering or that the operation will result in an adverse  
19 impact to the proposed or adjacent area, the permit or revision shall not be issued.  
20 The cabinet shall, consistent with all applicable requirements of this chapter, issue a  
21 permit or revision if the applicant demonstrates that the proposed coal mining  
22 operations will provide for reduction or elimination of the highwall, or reduction or  
23 abatement of adverse impacts resulting from past mining activities, or stabilization  
24 or enhancement of a previously mined area. The cabinet shall insure that all  
25 reasonably available spoil material will be used to backfill the highwall to the  
26 extent practical and feasible; provided, however, that in all cases the holes be  
27 properly sealed and backfilled to a minimum of four (4) feet above the coal seam

1           being mined.

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

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