

401 KAR 5:055. Scope and applicability of the KPDES Program and pretreatment requirements.

RELATES TO: KRS 61.870-61.884, 224.1-010, 224.1-070, 224.1-400, 224.18-100, 224.70-100, 224.70-120, 224.99-010, 33 C.F.R. 153, 40 C.F.R. 122, 123.44, 124.62, 131, 136, 144, 258, 261, 300, 401-471, 33 U.S.C. 1251 -1387, 42 U.S.C. 300f – 300j, 6907

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 224.16-050, 224.18-100, 224.70-100, 224.70-110, 224.73-120, 40 C.F.R. 1.25(e), 25, 122.21, 300, 33 U.S.C. 1251 -1387, 42 U.S.C. 6901, 6902, 6907

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the cabinet to provide for the prevention, abatement, and control of water pollution, to issue, continue in effect, revoke, modify, suspend or deny permits to discharge into waters of the Commonwealth, and authorizes the cabinet to require technological levels of treatment and effluent limitations. KRS 224.16-050(1) authorizes the cabinet to issue federal permits pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. 1251 – 1387. KRS 224.16-050(4) requires that the cabinet shall not issue any permit pursuant to this administrative regulation that is more stringent than if the permit was issued by the federal government. KRS 224.73-120 authorizes the cabinet to apply and enforce against users of publicly owned treatment works the requirements of monitoring, recordkeeping and reporting, effluent limitations, and pretreatment standards for the introduction of pollutants into treatment works. This administrative regulation establishes the scope and applicability of the KPDES program and identifies categories of point sources required to obtain a KPDES permit, requirements pertaining to exclusions and prohibitions, requirements for general permits, requirements for disposal into wells and into publicly-owned treatment works (POTW), and requirements for disposal by land application. This administrative regulation implements 33 U.S.C. 1311, 1314, 1317, 1318, 1319, 1342, and 1345 related to the cabinet's pretreatment program and establishes responsibilities of the Commonwealth of Kentucky, local government, industry, and the public to implement the national pretreatment program to control pollutants as established in 40 C.F.R. 403.1.

Section 1. Definitions. Definitions established in 40 C.F.R. 122.2 shall apply for the interpretation of federal regulations that are cited within this administrative regulation.

Section 2. Applicability of the KPDES Requirements.

- (1) A KPDES permit shall be required to discharge pollutants from a point source into waters of the Commonwealth.
- (2) Compliance with the KPDES program requirements shall constitute compliance with the operational permit requirements of 401 KAR 5:005.
- (3) Failure to obtain a KPDES permit shall not relieve a discharger whose discharge is subject to the KPDES program from complying with the applicable performance standards of the KPDES program, 401 KAR 5:045 through 5:080.

Section 3. Point Source Categories Requiring a KPDES Permit.

- (1) The following categories of point sources shall require a KPDES permit to discharge:
 - (a) A point source discharge identified in 40 C.F.R. 122;
 - (b) A concentrated animal feeding operation;
 - (c) A concentrated aquatic animal production facility;
 - (d) A discharge into aquaculture projects;
 - (e) A discharge from separate storm sewers; and
 - (f) A silviculture point source.
- (2) A facility covered by a general permit issued pursuant to Section 8 of this administrative regulation may be required to obtain an individual permit based on contributions to water pollution.

(3) If an individual permit is required pursuant to this section, except as provided in subsection (4) of this section, the cabinet shall notify the discharger of that decision and the reasons for it in writing.

(a) The discharger shall apply for a permit pursuant to 401 KAR 5:060 within sixty (60) days of notice, unless an extension request is granted.

(b) The question of if the permit determination was proper shall remain open for consideration during the public comment period pursuant to 401 KAR 5:075 and in a subsequent hearing pursuant to KRS 224.10-420(2).

(4)

(a) Prior to a determination that an individual permit shall be required for a stormwater discharge, the cabinet may require the discharger to submit information regarding the nature of the discharge as established in 40 C.F.R. 122.21(e) if:

1. The provisions of the general permit are not sufficient to protect human health and the environment; or

2. The discharger has a history of noncompliance with the provisions of the general permit.

(b) If an individual permit is required pursuant to this section, the cabinet shall notify the discharger of that decision and the reasons for it in writing.

(c) The discharger shall apply for a KPDES permit within sixty (60) days of notice, unless an extension request is granted.

(d) The question of if the initial determination was proper shall remain open for consideration during the public comment period pursuant to 401 KAR 5:075 and in a subsequent hearing pursuant to KRS 224.10-420(2).

Section 4. Exclusions. An exclusion from the requirement to obtain a KPDES permit shall be:

(1) A discharge identified in 40 C.F.R. 122.3 or KRS 224.16-050(6);

(2) An authorization by permit or by rule that is prepared to assure that underground injection will not endanger drinking water supplies, pursuant to the Safe Drinking Water Act, 42 U.S.C. 300f-300j, and that are issued under a state or federal Underground Injection Control program;

(3) An underground injection control well that is permitted pursuant to 40 C.F.R. 144 if those permits are protective of public health and welfare and prevent the pollution of ground and surface waters; or

(4) A discharge that is not regulated by the U.S. EPA under the Clean Water Act Section 402, 33 U.S.C. 1342.

Section 5. Prohibitions. The cabinet shall not issue a KPDES permit if:

(1) The conditions of the permit would violate the provisions of KRS Chapter 224;

(2) The regional administrator has objected to issuance of the permit in writing pursuant to the procedures specified in 40 C.F.R. 123.44;

(3) The conditions of the permit do not comply with the water quality standards established in 401 KAR Chapter 10; or

(4) A prohibition is established in 40 C.F.R. 122.4.

Section 6. Variance Requests from Technology-Based Effluent Limitations.

(1) A non-POTW may request a variance from otherwise applicable effluent limitations as established in 40 C.F.R. 122.21(m).

(2) A non-POTW may request an expedited variance as established in 40 C.F.R. 122.21(o).

Section 7. Effect of a Permit. The effect of a KPDES permit shall be as established in 40 C.F.R. 122.5.

Section 8. A General permit shall be issued as established in 40 C.F.R. 122.28.

Section 9. Disposal of Pollutants into Underground Injection Control Wells, into Publicly Owned Treatment Works, or by Land Application.

(1) An adjustment of effluent limitations related to disposal of pollutants into wells, into publicly owned treatment works, or by land application shall be as established in 40 C.F.R. 122.50.

(2) The cabinet may issue permits to control the disposal of pollutants into wells if necessary to protect the public health and welfare and to prevent the pollution of ground and surface waters.

Section 10. Variances from Technology-Based Treatment Requirements Available to KPDES Applicants. Consistent with KRS 224.16-050, the variance provisions in this section and in 401 KAR 5:080, Sections 2 and 4, establish those variances from technology-based requirements available to KPDES applicants.

(1) Economic capability. The cabinet, with the concurrence of U.S. EPA, may modify BAT requirements for a point source if the owner or operator demonstrates that the variance satisfies the requirements of 33 U.S.C. 1311(c).

(2) Environmental considerations. The cabinet, with the concurrence of U.S. EPA, may modify the BAT requirement for a point source that does not discharge toxic pollutants identified in 40 C.F.R. 401.15, conventional pollutants, or the thermal component of that discharge, if the owner or operator demonstrates that the modification is consistent with the conditions established in 33 U.S.C. 1311(g).

(3) Innovative technology. The cabinet shall establish a date for complying with the deadline for achieving BAT not later than two (2) years after the date for compliance with the effluent limitation would otherwise be applicable, if the innovative technology is as established in 33 U.S.C. 1311(k) and after consultation with the U.S. EPA Regional Administrator, as required by 40 C.F.R. 124.62(a)(2).

(4) Thermal pollution. An alternative effluent limitation for the thermal component of a discharge shall be as established in 33 U.S.C. 1326(a).

Section 11. KPDES Pretreatment Requirements.

(1) This administrative regulation shall not affect pretreatment requirements established by local law if those requirements are not less stringent than those established in state or national pretreatment standards or other requirements or prohibitions established under the National Water Pollution Control Act, 33 U.S.C. 1251-1387 or this administrative regulation.

(2) Prohibited discharges shall be as established in 40 C.F.R. 403.5.

(3) Categorical standards shall be as established in 40 C.F.R. 403.6.

(4) The granting of removal credits shall be as established in 40 C.F.R. 403.7.

(5) The development by a POTW of pretreatment program requirements shall be as established in 40 C.F.R. 403.8.

(6) The submission for approval of a pretreatment program or authorization to revise pretreatment standards shall be as established in 40 C.F.R. 403.9.

(7) The approval procedures for POTW pretreatment programs and POTW granting of removal credits shall be as established in 40 C.F.R. 403.11.

(8) The reporting requirements for POTWs and industrial users shall be as established in 40 C.F.R. 403.12.

(9) Variances from categorical pretreatment standards as a result of fundamentally different factors shall be as established in 40 C.F.R. 403.13.

(10) Confidentiality.

(a) Information submitted to the cabinet pursuant to this Section may be claimed as confidential if the claim of confidentiality complies with KRS 224.10-210 and 224.10-

212.

(b) All other information submitted to the POTW shall be available to the public at least to the extent provided by KRS 61.870 through 61.884.

(11) Net-gross calculation shall be as established in 40 C.F.R. 403.15.

(12) Upset provisions shall be as established in 40 C.F.R. 403.16.

(13) Bypasses shall be as established in 40 C.F.R. 403.17.

(14) Modification of POTW pretreatment programs shall be as established in 40 C.F.R. 403.18.

(15) Pretreatment program reinvention pilot projects under Project XL shall be as established in 40 C.F.R. 403.20.

Section 12. Substitutions, Exceptions, and Additions to Cited Federal Regulations.

(1) "Waters of the Commonwealth" shall be substituted for "Waters of the United States" in the federal regulations cited in this administrative regulation.

(2) "Cabinet" shall be substituted for "Director" in the federal regulations cited in this administrative regulation.

(3) "KPDES" shall be substituted for "NPDES" in the federal regulations cited in this administrative regulation.

(4) "Standard metropolitan statistical areas as defined by the University of Louisville Urban Studies Center, consistent with the U.S. Office of Management and Budget" shall be substituted for "Standard metropolitan statistical areas as defined by the Office of Management and Budget" in 40 C.F.R. 122.28(a)(1)(vi).

(5) "Urbanized areas as designated by the University of Louisville Urban Studies Center consistent with the U.S. Bureau of the Census" shall be substituted for "Urbanized areas as designated by the Bureau of the Census according to criteria in 30 FR 15202, effective May 1, 1974" in 40 C.F.R. 122.28(a)(1)(vi).

(9 Ky.R. 854; 1103; 10 Ky.R. 9; eff. 6-1-1983; 11 Ky.R. 740; 1028; eff. 1-7-1985; 12 Ky.R. 511; eff. 12-10-1985; 13 Ky.R. 241; eff. 9-4-1986; 20 Ky.R. 3231; 21 Ky.R. 364; eff. 8-24-1994; 29 Ky.R. 1031; 1545; eff. 12-18-2002; TAm eff. 8-9-2007; 35 Ky.R. 2520; 36 Ky.R. 364; 575; 9-25-2009; 39 Ky.R. 265; 990; eff. 3-8-2013; 44 Ky.R. 2620; 45 Ky.R. 1009; eff. 11-1-2018.)