

1 AN ACT relating to permits.

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

3 ➔Section 1. KRS 224.16-050 is amended to read as follows:

4 (1) **(a)** The cabinet may issue federal permits pursuant to 33 U.S.C. sec. 1342(b) of
5 the Federal Water Pollution Control Act (33 U.S.C. secs. 1251 et seq.) subject
6 to the conditions imposed in 33 U.S.C. secs. 1342(b) and 1342(d). The cabinet
7 may issue federal permits pursuant to 33 U.S.C. sec. 1344(e) and (g) of the
8 Federal Water Pollution Control Act, 33 U.S.C. secs. 1251 et seq., subject to
9 the conditions imposed in 33 U.S.C. sec. 1344(h), (i), and (j). Any exemptions
10 granted in the issuance of NPDES permits shall be pursuant to 33 U.S.C. secs.
11 1311, 1312, and 1326(a). The cabinet shall report to the **Governor and to the**
12 **standing committees of jurisdiction over environmental protection, and**
13 **appropriations and revenue, no later than January 1, ~~2023~~[2006], on the costs,**
14 **personnel requirements, and any statutory or regulatory changes needed to**
15 **support state assumption of the permitting program under 33 U.S.C. 1344(e)**
16 **and (g), and the anticipated benefits in permit streamlining and environmental**
17 **quality from state administration of the program.**

18 **(b) The Governor may request assumption of the permitting program under 33**
19 **U.S.C. 1344(e) and (g). Upon approval of the Governor's request by the**
20 **United States Environmental Protection Agency, the cabinet shall:**

21 **1. Reduce the duplication that currently exists in the various permit**
22 **application processes listed in paragraph (a) of this subsection due to**
23 **the presence of multiple state agencies;**

24 **2. Streamline the permitting process for coal companies by coordinating**
25 **applications for Section 401 water quality certifications and Sections**
26 **402 and 404 permits with mining and reclamation permits issues by**
27 **the Department for Natural Resources; and**

1 3. *Ensure that all permit applications are reviewed in a timely, fair and*
2 *equitable manner that neither gives undue privilege to, or*
3 *discriminates against, a prospective permittee.*

4 (2) The cabinet may certify pursuant to 33 U.S.C. sec. 1341 that applicants for a federal
5 permit for the construction or operation of facilities which may result in a discharge
6 into the waters of the Commonwealth will comply with the applicable provisions of
7 the Federal Water Pollution Control Act (33 U.S.C. secs. 1251 et seq.).

8 (3) The cabinet shall not undertake either of the actions authorized in subsections (1) or
9 (2) of this section unless the Governor of the Commonwealth has determined that
10 such activity will be in the best interests of the environment and the people of the
11 Commonwealth.

12 (4) The cabinet shall not impose under any permit issued pursuant to this section any
13 effluent limitation, monitoring requirement, or other condition which is more
14 stringent than the effluent limitation, monitoring requirement, or other condition
15 which would have been applicable under federal regulation if the permit were
16 issued by the federal government.

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

27 (6) The following activities do not require a permit issued under 33 U.S.C. sec. 1344.

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

- 1 (8) The cabinet may establish by regulation a fee for processing permit applications
2 under 33 U.S.C. sec. 1344.
- 3 **(9) (a) The cabinet shall establish the timeline for review of permit applications**
4 **and for issuance or denial of the permit. Upon receipt of the application, the**
5 **cabinet shall immediately assign the review of the application to qualified**
6 **personnel and the review shall comply with the timeline established by the**
7 **cabinet.**
- 8 **(b) Failure of the cabinet to assign the review and process the permit**
9 **application in accordance with the timelines established by the cabinet shall**
10 **trigger a review by the cabinet's inspector general, who shall report findings**
11 **of the investigation to the Legislative Research Commission.**
- 12 **(c) Failure by the cabinet to immediately assign a reviewer or to process an**
13 **application within the established timelines shall result in a fifty percent**
14 **(50%) refund of any fee collected under subsection (8) of this section.**
- 15 **(10) To facilitate the application process for each permit under this section, the**
16 **cabinet shall implement an online digital platform for processing permit**
17 **applications. The online platform shall display a flow chart for each type of**
18 **permit application under this section. The flow chart shall, at a minimum:**
- 19 **(a) Identify the various procedural steps in the permit application process;**
- 20 **(b) Identify information requirements within each step of the application**
21 **process, including submission requirements and agency review timelines for**
22 **each step;**
- 23 **(c) Identify if a deviation may be granted from those timelines under each step;**
- 24 **(d) Display the steps of the process which have been completed in a manner**
25 **that allows the applicant to track the progress in completing the application;**
26 **and**
- 27 **(e) Show when the application is administratively or technically complete and**

1 the agency begins the time period for making a final determination on
2 whether the permit will be issued or denied.

3 (11) The online digital platform shall, to the extent possible, allow the applicant to
4 quickly access each step in the online application process to work on the
5 application. Each submission under a given step in the application process shall
6 be time stamped by the cabinet, and shall reflect the date, name, and contact
7 information for the cabinet staff responsible for processing the application or any
8 of its parts. If there is a deviation in timelines, or if the application is being
9 withdrawn from the cabinet for correction, the online platform shall notify the
10 applicant.

11 (12) Information in the online digital platform shall be confidential, shall not be open
12 to public inspection, and shall not be subject to open records requests under KRS
13 61.870 to 61.884.