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## State NPDES Authority Statutes:

*Kentucky*



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# A National Agricultural Law Center Research Publication

## State NPDES Authority Statutes: Kentucky

### [KRS § 224.16-040](#)

### [KRS § 224.16-050](#)

*Current through the 2022 legislative session.*

#### **§ 224.16-040. Factors to be Considered When Issuing Federal Permits, Requiring Long-Term Control Plans, or Enforcing Federal Water Pollution Control Act.**

When issuing permits under KRS 224.16-050 for discharges consisting of combined sewer overflows, requiring and approving long-term control plans for wet weather discharges from combined or separate sanitary sewer systems, or enforcing provisions of the federal Water Pollution Control Act, 33 U.S.C. secs. 1251 et seq., the cabinet shall consider the following, to the extent allowable under this chapter and the federal Water Pollution Control Act:

- (1) Limitations on a community's financial capabilities and ability to raise or secure necessary funding;
- (2) Affordability of control options;
- (3) An evaluation of the effectiveness and affordability of control technologies;
- (4) Promotion of green infrastructure;
- (5) Reducing economic impacts on regulated entities, other state and local governmental entities, and residents of the Commonwealth;
- (6) Allowing for reasonable accommodations for regulated entities and other state and local governmental entities when inflexible standards and fines would impose a disproportionate financial hardship in light of the environmental benefits to be gained;
- (7) Giving preference, where proposed by a permittee, to control options that meet presumption approach performance criteria and demonstrate significant pollution reduction rather than mandating specific designs;
- (8) Allowing adequate time and flexibility for implementation schedules when justified by a clear environmental benefit, a community's ability to raise or secure adequate funds, an analysis concluding that the costs of a shorter implementation schedule outweigh the benefits of faster implementation, or other factors; and
- (9) Factors set forth in the United States Environmental Protection Agency's "Combined Sewer Overflow Control Policy" that may ease the cost burdens of implementing long-term control plans, including but not limited to small system considerations, the attainability of water quality standards, and the development of wet weather standards.



**§ 224.16-050. Issuance of Federal Permits by Cabinet; Activities Not Requiring Permit; Wetlands Delineation; Application Fee.**

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

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

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

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

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

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



- (a) From normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor draining, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices;
- (b) For the purpose of maintenance, including emergency reconstruction of recently damaged parts of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures;
- (c) For the purpose of construction or maintenance of farm or stock ponds, irrigation ditches, or the maintenance of drainage ditches;
- (d) For the purpose of construction of temporary sedimentation basins on a construction site which does not include placement of fill material into the navigable waters; or
- (e) For the purpose of construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment, where the roads are constructed and maintained, in accordance with best management practices, to ensure that flow and circulation patterns and chemical and biological characteristics of the navigable waters are not impaired, that the reach of the navigable waters is not reduced, and that any adverse effect on the aquatic environment will be minimized.

(7) Prior to assuming delegated authority from the United States Environmental Protection Agency to administer 33 U.S.C. sec. 1344(e) and (g), the cabinet shall enter into a memorandum of agreement with the United States Department of Agriculture (USDA) regarding wetlands delineation on agricultural lands or lands owned or operated by a USDA program participant. The cabinet shall give the same deference to wetlands delineations made by USDA as would have been given by a federal agency administering 33 U.S.C. sec. 1344(e) and (g).

(8) The cabinet may establish by regulation a fee for processing permit applications under 33 U.S.C. sec. 1344.

