



University of Arkansas Division of Agriculture

An Agricultural Law Research Project

**Nutrient Management Plans
Statutes & Regulations**

Kentucky

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Nutrient Management Plans

STATE OF KENTUCKY

- 1) **KRS §§ 224.10-100(19), 224.70-100, 110; 401 KAR 5:055, 5:060, § 5**
- 2) **KRS § 224.71-100 et seq.**
- 3) **KRS 224.10-100(19), 224.70-100, 224.70-110; 401 KAR 5:037, § 1(1)(c), (d), (e)(2), § 2, § 3**

The statutes and Constitution are current through the 2018 regular and special legislative sessions. The statutes are subject to changes by the Kentucky Reviser of Statutes.

1) **KRS §§ 224.10-100(19), 224.70-100, 110; 401 KAR 5:055, 5:060, § 5**

224.10-100. Powers and duties of cabinet.

In addition to any other powers and duties vested in it by law, the cabinet shall have the authority, power, and duty to:

[. . .]

(19) Issue, continue in effect, revoke, modify, suspend, or deny under such conditions as the cabinet may prescribe and require that applications be accompanied by plans, specifications, and other information the cabinet deems necessary for the following permits:

(a) Permits to discharge into any waters of the Commonwealth, and for the installation, alteration, expansion, or operation of any sewage system; however, the cabinet may refuse to issue the permits to any person, or any partnership, corporation, etc., of which the person owns more than ten percent (10%) interest, who has improperly constructed, operated, or maintained a sewage system willfully, through negligence, or because of lack of proper knowledge or qualifications until the time that person demonstrates proper qualifications to the cabinet and provides the cabinet with a performance bond;

(b) Permits for the installation, alteration, or use of any machine, equipment, device, or other article that may cause or contribute to air pollution or is intended primarily to prevent or control the emission of air pollution; or

(c) Permits for the establishment or construction and the operation or maintenance of waste disposal sites and facilities;

[. . .]

224.70-100 Policy and purpose as to water quality.

(1) It is hereby declared to be the policy of this Commonwealth to conserve the waters of the Commonwealth for public water supplies, for the propagation of fish and aquatic life, for fowl, animal wildlife and arboreous growth, and for agricultural, industrial, recreational and other legitimate uses; to provide a comprehensive program in the public interest for the prevention, abatement and control of pollution; to provide effective means for the execution and enforcement of such program; and to provide for cooperation with agencies of other states or of the federal government in carrying out these objectives.

(2) The following are among the purposes of KRS Chapter 224: to safeguard from pollution the uncontaminated waters of the Commonwealth; to prevent the creation of any new pollution of the waters of the Commonwealth; and to abate any existing pollution.

224.70-110 General prohibition against water pollution.

No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter.

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

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 5:050 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, effective July 1, 2012;
- (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.

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

(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 storm water 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), effective July 1, 2012, 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.

(c) The discharger shall apply for a KPDES permit within sixty (60) days of notice, unless an extension is requested by the applicant.

(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, effective July 1, 2012, 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, effective July 1, 2012;

(3) The conditions of the permit do not comply with the water quality standards established in 401 KAR 10:031; or

(4) A prohibition is established in 40 C.F.R. 122.4, effective July 1, 2012.

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), effective July 1, 2012.

(2) A non-POTW may request an expedited variance as established in 40 C.F.R. 122.21(o), effective July 1, 2011.

Section 7. Effect of a Permit. The effect of a KPDES permit shall be as established in 40 C.F.R. 122.5, effective July 1, 2012.

Section 8. A General permit shall be issued as established in 40 C.F.R. 122.28, effective July 1, 2012.

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, effective July 1, 2012.

(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, effective July 1, 2012, 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), effective July 1, 2012.

(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. 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 Sections 1 through 10 of this administrative regulation.

(2) "Cabinet" shall be substituted for "Director" if the authority to administer the federal regulations cited in Sections 1 through 10 of this administrative regulation has been delegated to the cabinet.

(3) "KPDES" shall be substituted for "NPDES" if the cabinet has been delegated authority to implement federal regulations cited in Sections 1 through 10 of 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).

401 KAR 5:060. KPDES application requirements.

[. . .]

Section 5. Concentrated Animal Feeding Operations.

(1) Additional permit application and special KPDES program requirements shall be as established in 40 C.F.R. 122.23, effective July 1, 2012.

(2) The incorporation of the terms of a CAFO's nutrient management plan into the terms and conditions of a general permit if a CAFO obtains coverage under a general permit in accordance with 40 C.F.R. 122.23(h) and 40 C.F.R. 122.28 is not a cause for permit modification pursuant to the requirements of 401 KAR 5:070, Section 6, or 40 C.F.R. 122.62, effective July 1, 2012.

(3) The incorporation of changes to the terms of a CAFO's nutrient management plan that have been revised in accordance with the requirements established in 40 C.F.R. 122.42(e)(6), effective July 1, 2012, shall be a minor modification as established in 40 C.F.R. 122.63, effective July 1, 2012.

[. . .]

2) KRS § 224.71-100 et seq.

224.71-100. Definitions for KRS 224.71-100 to 224.71-140.

As used in KRS 224.71-100 to 224.71-140, unless the context requires otherwise:

(1) “Agriculture operation” means any farm operation on a tract of land, including all income-producing improvements and farm dwellings, together with other farm buildings and structures incident to the operation and maintenance of the farm, situated on ten (10) contiguous acres or more of land used for the production of livestock, livestock products, poultry, poultry products, milk, milk products, or silviculture products, or for the growing of crops such as, but not limited to, tobacco, corn, soybeans, small grains, fruit and vegetables; or devoted to and meeting the requirements and qualifications for payments to agriculture programs under an agreement with the state or federal government;

(2) “Bad actor” means any person engaged in agriculture operations, who receives written notification of documented water pollution and of the agriculture water quality plan needed to prevent water pollution, and is provided technical assistance, and financial assistance when possible, to implement the agriculture water quality plan, but still refuses or fails to comply with the requirements of the agriculture water quality plan;

(3) “Best management practices” means, for agriculture operations, the most effective, practical, and economical means of reducing and preventing water pollution provided by the United States Department of Agriculture Soil Conservation Service and the Soil and Water Conservation Commission. Best management practices shall establish a minimum level of acceptable quality for planning, siting, designing, installing, operating, and maintaining these practices;

(4) “Conservation plan” means a plan, provided by the United States Department of Agriculture Soil Conservation Service and the Soil and Water Conservation Commission, describing best land management practices, including an installation schedule and maintenance program, which when completely implemented, will improve and maintain soil, water, and related plant and animal resources of the land;

(5) “Compliance plan” means a conservation plan containing best management practices developed for persons engaged in agriculture operations by the United States Department of Agriculture Soil Conservation Services, in conjunction with local conservation districts as required for eligibility under the Federal Food Security Act;

(6) “Forest stewardship management plan” means a plan developed by the cabinet’s Division of Forestry, the cabinet’s Division of Conservation, the

Department of Fish and Wildlife Resources, and the United States Department of Agriculture Soil Conservation Service which establishes practices for a person engaged in agriculture operations to manage forest lands in accordance with sound silvicultural principles;

(7) “Conservation district” means a subdivision of state government organized pursuant to KRS Chapter 262 for the specific purpose of assisting persons engaged in agriculture operations and land users in solving soil and water resources problems, setting priorities for conservation work to be accomplished, and coordinating the federal, state, and local resources to carry out these programs;

(8) “Groundwater” means subsurface water occurring in the zone of saturation beneath the water table and any perched water zones below the B soil horizon;

(9) “Water priority protection region” means an area specifically delineated where water pollution from agriculture operations has been scientifically documented;

(10) “Agriculture water quality plan” means a document incorporating the conservation plan, compliance plan, or forest stewardship management plan as necessary to prevent groundwater and surface water pollution from an agriculture operation;

(11) “Surface water” means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters, marshes and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface. Effluent ditches and lagoons used for waste treatment which are situated on property owned, leased, or under valid easement by a permitted discharger shall not be considered to be surface waters of the Commonwealth;

(12) “Soil and Water Conservation Commission” means the commission created in KRS 146.090 for the purpose of administering the organization of conservation districts; and

(13) “Livestock” means cattle, sheep, swine, goats, horses, alpacas, llamas, buffaloes, or any other animals of the bovine, ovine, porcine, caprine, equine, or camelid species.

224.71-110. Agriculture Water Quality Authority — Membership — Responsibilities.

(1) The Agriculture Water Quality Authority is created and administratively attached to the cabinet. The authority shall be a multidiscipline peer group that shall evaluate, develop, and improve best-management practices in conservation plans, compliance plans, and forest stewardship management plans; establish statewide and regional agriculture water quality plans; and otherwise promote soil and water conservation

activities that protect waters of the Commonwealth from the adverse impacts of agriculture operations within the Commonwealth. The cabinet shall provide staff to the authority.

(2) Within six (6) months of July 15, 1994, the Soil and Water Conservation Commission shall submit to the Governor for appointment to the Agriculture Water Quality Authority a list of three (3) persons recommended by each of the following state agencies and organizations:

- (a) Kentucky Association of Conservation Districts;
- (b) Kentucky Department of Agriculture;
- (c) University of Kentucky College of Agriculture Cooperative Extension Service;
- (d) Kentucky Farm Bureau Federation, Inc.;
- (e) Division of Conservation, Energy and Environment Cabinet;
- (f) Division of Forestry, Energy and Environment Cabinet;
- (g) Kentucky Geological Survey; and
- (h) Environmental organizations.

The membership of the Agriculture Water Quality Authority appointed by the Governor shall consist of one (1) representative from each of the groups identified in paragraphs (a) to (h) of this subsection and three (3) members at large from agriculture operations. The Soil and Water Conservation Commission shall solicit nominations from Kentucky agriculture operations organizations and submit those names to the Governor for selection of the three (3) members at large from agriculture operations. The Governor shall select four (4) members to serve two (2) year initial terms, four (4) members to serve three (3) year initial terms, and three (3) members to serve four (4) year initial terms. All succeeding terms shall be four (4) year terms. A representative from the United States Soil Conservation Service and a representative from the United States Agriculture Stabilization and Conservation Service may also be appointed by the Governor to serve on the authority. One (1) representative each from the Division of Water, Energy and Environment Cabinet and the Division of Public Health Protection and Safety, Cabinet for Health and Family Services shall serve as ex officio members.

(3) It shall be the responsibility of the Agriculture Water Quality Authority to establish, at a minimum, the following four (4) committees for agriculture operations, with membership outside the Agriculture Water Quality Authority:

- (a) Livestock and poultry;
- (b) Crops, including but not limited to tobacco, corn, soybeans, small grains, fruits and vegetables, pasture and timber;
- (c) Pesticides, fertilizers, and other agricultural chemicals; and
- (d) Farmstead issues.

(4) The Agriculture Water Quality Authority shall have the following responsibilities:

- (a) Review water quality data as available;
- (b) Review university research on water quality and alternative best-management practices research;
- (c) Evaluate the adoption and effectiveness of best-management practices, and modify best-management practice design standards to improve water quality protection practices;
- (d) Develop by July 1, 1996, statewide agriculture water quality plans to address identifiable water pollution problems from agriculture operations, and continue to evaluate and modify the agriculture water quality plans, as necessary to prevent water pollution from agriculture operations;
- (e) Assist with the review of state-funded and other water quality monitoring data and with the establishment of agriculture water priority protection regions;
- (f) Provide technical assistance to persons engaged in agriculture operations and to the Soil and Water Conservation Commission in its efforts to coordinate water quality protection as related to agriculture operations;
- (g) Work with the United States Soil Conservation Service, United States Agriculture Stabilization and Conservation Service, and conservation districts to disseminate to agriculture operations the best-management practices, conservation plans, compliance plans, forest stewardship management plans, and agriculture water quality plans which address the protection of groundwater and surface water;
- (h) Provide the Governor and the Legislative Research Commission with biennial reports of the progress of the Agriculture Water Quality Authority program; and
- (i) Establish procedures for modifications to be incorporated into statewide or regional agriculture water quality plans.

(5) The cabinet's Division of Water shall approve or disapprove any statewide and regional water quality plan within thirty (30) days of receiving the plan from the Agriculture Water Quality Authority. All provisions of a statewide or regional water quality plan not found deficient shall be approved. If the Division of Water finds any provision of the statewide or regional agriculture water quality plan deficient, the Division of Water shall give written notice to the authority of those provisions found to be deficient. Within the thirty (30) days following the notice of deficiency, the authority shall deliver to the Division of Water a written response setting forth proposed solutions to the deficiencies. Any deficiencies which remain unresolved shall be resolved in a manner agreed to jointly by the Division of Water and the authority within sixty (60) days unless the Division of Water and authority jointly agree to an extension or alternate dispute resolution. The Division of Water shall approve or disapprove all modifications to the statewide and regional plans as set forth at KRS 224.71-120(8).

224.71-120. Agriculture water quality plans — Monitoring — Water priority protection regions — Plan modifications.

Each agriculture operation shall establish an agriculture water quality plan as follows:

(1) In the case of an agriculture operation which already has in place a conservation plan, compliance plan, or forest stewardship management plan, the agriculture water quality plan for that agriculture operation shall be the conservation plan, compliance plan, or forest stewardship management plan until the time the statewide agriculture water quality plan for agriculture is developed, approved, and incorporated into the existing plan.

(2) All persons engaged in agriculture operations are encouraged to follow the best management practices provided by the Soil and Water Conservation Commission in the "Agriculture Best Management Practices Manual" until the statewide agriculture water quality plan is developed and approved.

(3) The approved statewide agriculture water quality plan shall establish the applicable requirements to be used by the technical agencies in assisting persons engaged in agriculture operations in the revision and modification of their conservation plans, compliance plans, or forest stewardship management plans. Within five (5) years of the approval of the statewide agriculture water quality plan, persons engaged in agriculture operations across the state shall implement the applicable requirements of the statewide plan. A person engaging in agriculture operations where water pollution has been documented by the cabinet shall be presumed to be in compliance with KRS 224.71-100 to 224.71-140 if that person has timely and properly implemented the applicable requirements of the statewide agriculture water quality plan. If it is determined that the plan does not prevent the documented water pollution, it shall be the responsibility of the Agriculture Water Quality Authority, not the agriculture operations, to identify the necessary modifications to the plan to prevent the documented pollution. The Commonwealth of Kentucky, through the conservation districts, shall assure that

technical assistance is made available to assist persons engaged in agriculture operations with the implementation of the statewide plan requirements. The Commonwealth of Kentucky recognizes the public benefit of providing the financial resources necessary to protect groundwater and surface water and may make available cost share dollars to assist persons engaged in agriculture operations with the implementation of their plans as resources become available. The time for compliance with an agriculture water quality plan may be extended based on the availability of technical and financial assistance.

(4) To ensure the success of agriculture's plan to protect groundwater and surface water, available statewide monitoring data shall be used to identify trends in water quality across the state and to complement the groundwater assessment program of KRS 247.088. This data shall help identify water protection priority regions, develop a scientific water quality database, and develop sensitivity map information. As priority areas are identified on a regional or local basis, efforts shall be made to conduct an intensive monitoring program by the Division of Water, in cooperation with Kentucky Geological Survey, and the Agriculture Water Quality Authority, to investigate known or suspected instances of groundwater pollution.

(5) The cabinet's Division of Water shall notify in writing the local conservation districts, the Soil and Water Conservation Commission, and the Agriculture Water Quality Authority that water pollution from agriculture operations within a region has been documented through data collected from monitoring efforts. The Division of Water, working with the Agriculture Water Quality Authority, shall designate water priority protection regions where it is documented that agriculture is contributing to water quality pollution problems. If the cabinet's Division of Water identifies water pollution in a region, the authority shall reevaluate the effectiveness of the best management practices, and the applicable provisions of the statewide agriculture water quality plan in effect for agriculture operations in that region. Working with the Soil and Water Conservation Commission and the conservation district, the Agriculture Water Quality Authority shall develop a regional agriculture water quality plan and assist persons engaged in agriculture operations in the identified region in taking the appropriate steps to modify their agriculture water quality plan.

(6) Upon notice from the cabinet's Division of Water that water pollution from agriculture operations has been documented in a water priority protection region of the state, the Soil and Water Conservation Commission and local conservation districts shall provide notice to persons engaging in agriculture operations within the region of the availability of any technical and financial assistance. The notice shall also state that, in order to qualify for any available assistance, the person engaging in agriculture operations shall comply with the regional water quality plan. The notice shall be in a form which shall not limit the ability of a person engaged in agriculture operations to participate in state and federal assistance programs. The Division of Water and the conservation districts, in consultation

with the Agriculture Water Quality Authority, shall set the time for implementation of the regional water quality plan.

(7) A person engaging in agriculture operations in an agriculture water priority protection region shall implement the regional plan with assistance from the commission, the conservation districts, and the Division of Water.

(8) Persons engaged in agriculture operations may obtain modifications of any statewide or regional agriculture water quality plan by submitting the proposed modification for review to the appropriate conservation district in accordance with the procedure established in the statewide agriculture water quality plan. The conservation district shall review proposed modifications and make a recommendation to the Agriculture Water Quality Authority for consideration. If the authority recommends approval of the modification, the cabinet's Division of Water shall approve or disapprove the modification on at least a quarterly basis, unless otherwise provided in the statewide agriculture water quality plan.

(9) A person engaging in agriculture operations who is in a water priority protection region where water pollution has been documented by the cabinet shall be presumed to be in compliance with KRS 224.71-100 to 224.71-140 if that person has timely and properly implemented the practices required by the portions of the regional agriculture water quality plan which apply to that person's activities.

(10) Where there is documented evidence of a violation of water pollution laws or administrative regulations traceable to a specific agriculture operation, the provisions of KRS 224.71-130 shall govern the resolution of the violation.

224.71-130. Noncompliance with agriculture water quality plan.

(1) For purposes of KRS 224.71-100 to 224.71-140, if the cabinet's Division of Water documents that a person engaged in agriculture operations is conducting or allowing the conduct of any agriculture operation in a manner which results in water pollution or if the person fails to implement the provisions of the applicable agriculture water quality plan, the Division of Water shall notify the person in writing, with a copy of the notice to the appropriate conservation district, of the following:

(a) The facts alleged to constitute the water pollution or failure to comply with applicable laws or requirements of the agriculture water quality plan alleged to constitute the noncompliance;

(b) Availability of any technical and financial assistance from state or federal sources through the conservation districts; and

(c) Set forth a reasonable period for compliance or, the person engaged in agriculture operations may submit a compliance plan which may include a

compliance schedule with corrective measures designed to correct the failure to conform with the applicable provisions of the agriculture water quality plan subject to approval by the Division of Water. A compliance schedule may incorporate corrective measures and time schedules recommended by the appropriate conservation district, if requested by persons engaged in agriculture operations.

(2) If any person engaged in agriculture operations fails or refuses to comply or respond to the written notice, unless excused or extended by the Division of Water, the person shall be deemed a “bad actor” and shall be subject to enforcement action for violations of KRS 224.71-100 to 224.71-140 as well as loss of eligibility for further financial assistance.

(3) In any violation issued under this section, the cabinet shall consider the compliance of a person with the state and any regional agriculture water quality plan as a mitigating factor in determining whether to impose civil penalties.

224.71-135. Confidentiality of documents relating to plans submitted by agriculture operations.

For purposes of KRS 224.71-100 to 224.71-140, any documents relating to agriculture operations’ agriculture water quality plans, conservation plans, or forest stewardship management plans, submitted to a local conservation district office or a state agency shall be confidential, and their disclosure to anyone other than a state or federal official is prohibited. The privilege of confidentiality given under this section does not apply to an agriculture operation’s application for financial assistance from the soil erosion and water quality cost share program. The confidentiality given under this section shall not preclude disclosure of an agriculture operation’s agriculture water quality plan to the Agriculture Water Quality Authority pursuant to a request by the authority for the purpose of the authority carrying out its statutory duties. In a civil or administrative proceeding, after a private review consistent with the Kentucky Rules of Civil Procedure, all documents claimed confidential under this section shall be disclosed if the court or hearing officer determines that the documents claimed confidential show evidence of noncompliance with this chapter or with applicable federal, state, or local law. The party asserting the privilege of confidentiality shall have the burden of showing that the privilege is properly asserted. If any person engaged in an agriculture operation is deemed a “bad actor” under KRS 224.71-130(2), the privilege of confidentiality given under this section to documents relating to the bad actor’s agriculture operation shall be lost. The confidentiality granted by this section shall not prohibit disclosure of statistical information not descriptive of any identifiable agriculture operation or person. Nothing in this section shall prohibit disclosure of agency reports, monitoring or sampling data, and other information contained in state or local conservation district files relating to water quality compliance and investigations or notices under KRS 224.71-130.

224.71-140. Construction of KRS 224.71-100 to 224.71-140.

Nothing in KRS 224.71-100 to 224.71-140 shall be construed as affecting the obligation of any person concerning any permit, certification, or authorization required under state or federal law. Nothing in KRS 224.71-100 to 224.71-140 shall be construed to require the cabinet to give prior written notice in the case of any violation of a permit, certification, or authorization required under state or federal law or in the case of any violation requiring emergency action for violations of KRS 224.10-410, 224.1-400, and 151.297 or enforcement of any administrative or judicial order to protect human health or the environment.

224.71-145. Person implementing practice or plan under Clean Water Act nationwide permit to be deemed as having received state certification — Effect.

(1) Notwithstanding the provisions of KRS 224.71-140, if any person conducting an agriculture, silviculture, or other similar best management or technically-assisted practice or plan as defined in KRS 224.71-100(3), (4), (5), (6), or (10) is required to obtain a Clean Water Act Nationwide Permit No. 12, 13, 14, 26, 27, 33, or 37 and is, in good faith, implementing the practice or plan pursuant to KRS 224.71-120, then the practice shall be deemed to have received the certification from the Commonwealth of Kentucky required pursuant to 33 U.S.C. sec. 1341(a).

(2) If a person is deemed to have a certification pursuant to subsection (1) of this section, then the cabinet shall not require the person to apply for the certification or impose any other conditions on the activity pursuant to state law or the federal Clean Water Act, 33 U.S.C. secs. 1251 et seq., as amended.

(3) If a person has not been finally adjudged to be in violation of an approved agriculture water quality plan, or agriculture, silviculture, or other similar best management or technically-assisted plan or practice, then the person shall be deemed to be implementing the plan or practice in good faith for purposes of subsection (1) of this section.

3) KRS 224.10-100(19), 224.70-100, 224.70-110; 401 KAR 5:037, § 1(1)(c), (d), (e)(2), § 2, § 3

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224.70-100 Policy and purpose as to water quality.

(1) It is hereby declared to be the policy of this Commonwealth to conserve the waters of the Commonwealth for public water supplies, for the propagation of fish and aquatic life, for fowl, animal wildlife and arboreous growth, and for agricultural, industrial, recreational and other legitimate uses; to provide a comprehensive program in the public interest for the prevention, abatement and control of pollution; to provide effective means for the execution and enforcement of such program; and to provide for cooperation with agencies of other states or of the federal government in carrying out these objectives.

(2) The following are among the purposes of KRS Chapter 224: to safeguard from pollution the uncontaminated waters of the Commonwealth; to prevent the creation of any new pollution of the waters of the Commonwealth; and to abate any existing pollution.

224.70-110 General prohibition against water pollution.

No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter.

401 KAR 5:037. Groundwater protection plans.

Section 1.

(1) Applicability. Except for activities established in subsections (2) and (3) of this section, a person responsible for conducting any of the activities listed in paragraphs (a) through (p) of this subsection shall prepare and implement a groundwater protection plan:

[. . .]

(c) Applying of pesticides or fertilizers for commercial purposes;

(d) Applying of fertilizers or pesticides for public right-of-way maintenance or institutional lawn care;

(e) Land treatment or land disposal of a pollutant;

[. . .]

(2) General exclusion. A person who conducts an activity established in subsection (1) of this section shall not be required to prepare or to implement a groundwater protection plan for that activity if that person can demonstrate by substantial evidence based on the factors established in this subsection, the activity has no reasonable potential of altering the physical, thermal, chemical, biological, or radioactive properties of the groundwater in a manner, condition, or quantity that will be detrimental to the public health or welfare, to animal or aquatic life, to the use of groundwater as present or future sources of public water supply or to the use of groundwater for recreational, commercial, industrial, agricultural, or other legitimate purposes.

[. . .]

Section 2. Preparation of Groundwater Protection Plans.

(1) General requirements for site-specific and generic groundwater protection plans. The practices established by a groundwater protection plan shall be designed and implemented in a manner that prevents groundwater pollution. A person conducting an activity established in Section 1(1) of this administrative regulation shall determine if an exclusion of Section 1(2) or (3) of this administrative regulation applies to that activity.

(2) Deadlines for preparation and implementation. Except for activities excluded by Section 1(2) or (3) of this administrative regulation, a person required to prepare and to implement a groundwater protection plan pursuant to Section 1 of this administrative regulation, shall pre- pare and implement a site-specific or

generic groundwater protection plan upon commencement of the regulated activity.

(3) Elements of generic and site-specific groundwater protection plans. Both generic and site-specific groundwater protection plans shall contain:

(a) General information regarding the facility and its operation, including the:

1. Name of the facility;
2. Address of the facility; and
3. Name of the person or persons responsible for implementing the plan;

(b) Identification of all activities established in Section 1(1) of this administrative regulation and not excluded by Section 1(2) or (3) of this administrative regulation;

(c) Identification of all practices chosen for the plan to protect groundwater from pollution; (d) An implementation schedule for the practices selected for the plan;

(e) A description of and implementation schedule for employee training necessary to ensure implementation of the plan;

(f) An inspection schedule requiring regular inspections as needed to ensure that all practices established are in place and properly functioning;

(g) A certification by the person responsible for implementing the plan or an "authorized representative" as defined by 401 KAR 5:002 that the plan complies with the requirements of this administrative regulation, and that the person responsible for implementing the plan has re- viewed the terms of the plan and shall implement its provisions.

(4) Selection of practices for groundwater protection. A person required to prepare a groundwater protection plan pursuant to this section shall evaluate technological means for protection of groundwater from pollution that could result from activities addressed by the plan and shall select practices for the plan that protect groundwater from pollution. The groundwater protection practices chosen for a groundwater protection plan may include:

(a) Equipment design;

- (b) Operational procedures;
- (c) Preventive maintenance techniques;
- (d) Construction techniques;
- (e) Personnel training;
- (f) Spill response capabilities;
- (g) Alternative materials or processes;
- (h) Implementation of new technology;
- (i) Modification of facility or equipment;
- (j) Spill prevention control and countermeasure plans;
- (k) Best management practices;
- (l) Hazardous waste contingency plans;
- (m) Other plans prepared pursuant to other programs that protect groundwater from pollution;
- (n) Runoff or infiltration control systems;
- (o) Siting considerations; and
- (p) Any other practice which will protect groundwater from pollution.

(5) Specific practices. In selecting practices to protect groundwater for the activities established in Section 1(1) of this administrative regulation and not excluded by Section 1(2) or (3) of this administrative regulation a person preparing a groundwater protection plan shall consider the nature of the pollutant and the hydrogeologic characteristics at or near the location of the activity and shall comply with the requirements established in paragraphs (a) through (e) of this subsection in selecting those practices.

(a) Loading and unloading areas. Loading and unloading areas shall have spill prevention and control procedures and operation procedures designed to prevent groundwater pollution. Spill containment and cleanup equipment shall be readily accessible.

(b) On-site sewage disposal systems. A person shall not install a new or replace an existing on-site sewage disposal system if a publicly or

privately owned treatment works capable of treating the pollutants to be discharged is available.

(c) Floor drains.

1. A person using existing floor drains shall evaluate those floor drains to determine if they discharge to an on-site sewage disposal system, to a closed-loop collection or recovery system, or to a waste treatment system permitted under the Kentucky Pollutant Discharge Elimination System.
2. If drains are identified that do not discharge to an on-site sewage disposal system, a closed-loop collection or recovery system, or a waste treatment system permitted under the Kentucky Pollutant Discharge Elimination System, that person shall terminate the discharge or connect it to an on-site sewage disposal system, a closed-loop collection or recovery system, or a waste treatment system permitted under the Kentucky Pollutant Discharge Elimination System.
3. A person shall not install a floor drain unless it is connected to an on-site sewage disposal system, closed-loop collection or recovery system, or a waste treatment system permitted under the Kentucky Pollutant Discharge Elimination System.

(d) Tanks and sumps.

1. A person using a tank or sump shall prepare and implement good housekeeping practices, operating procedures, operator training, and spill response procedures.
2. A person using a tank or sump shall consider leak control devices, secondary containment, integrity testing, mechanical inspections, and overfill protection devices.
3. Containment additional to subsections (1) and (2) of this subsection shall not be required for sumps and tanks that are used solely to provide secondary containment.

(e) New surface impoundments, lagoons, pits, or ditches.

1. A person who constructs a new surface impoundment, lagoon, pit, or ditch that will contain a pollutant shall evaluate the site's hydrogeology and shall design and operate it to minimize discharges to soil. Soils may be used to construct liners if the soil liner will protect groundwater from pollution.

2. All necessary and appropriate measures shall be taken to prevent groundwater pollution. The person shall consider the use of liners, secondary containment, leak detection devices, and other appropriate and effective control systems that will protect groundwater from pollution.

3. Containment additional to subsections (1) and (2) of this subsection shall not be required for new surface impoundments, lagoons, pits, and ditches that are used solely to provide secondary containment.

(6) Exceptions to specific requirements.

(a) The provisions of subsection (5) of this section shall not apply to activities that are governed by other federal, state, or regulatory programs that comply with the requirements of subsection (7) of this section while the person conducting the activities remains in compliance with the other program.

(b) Variances from the provisions of subsection (5) of this section may be granted by the cabinet if the applicant for a variance demonstrates that a variance will not result in pollution of groundwater, but a person required to prepare a groundwater protection plan pursuant to this section shall not take any actions contrary to the provisions of subsection (5) of this section without prior written approval of the cabinet.

(7) Incorporation of requirements of other regulatory programs.

(a) Groundwater protection activities required by other federal, state, or local regulatory programs may be incorporated into a site-specific or generic groundwater protection plan by reference if the other regulatory program contains:

1. Management and design standards;
2. Mandatory monitoring for groundwater pollution or methods of detecting discharges, spills, or releases to groundwater; and
3. Specific corrective action criteria.

(b)

1. The plan shall identify each activity covered by the other regulatory program. The person responsible for implementing the plan shall certify compliance with the other regulatory program.

2. The provisions of the other program shall be the groundwater protection plan for purposes of this administrative regulation for the activities covered by the other regulatory program.

3. If activities identified in Section 1(1) of this administrative regulation and not excluded in Section 1(2) or (3) of this administrative regulation are conducted that are not covered by the other regulatory program, the plan shall contain separate practices designed to protect groundwater from pollution for each activity not covered by the other regulatory program.

(8) Generic groundwater protection plans. A generic groundwater protection plan shall be prepared in accordance with subsections (1) through (7) of this section and may govern all or part of a person's activities. A generic groundwater protection plan shall not be sufficient by itself if it does not address all activities conducted by the person that are established in Section 1(1) of this administrative regulation and not excluded by Section 1(2) or (3) of this administrative regulation.

(a)

1. A person responsible for preparing and implementing a groundwater protection plan required by this administrative regulation may apply one (1) provision of the plan to all substantially identical activities if factors established in Section 1(2) of this administrative regulation do not cause substantial differences in the potential to pollute among locations.

2. If substantial differences do exist, the plan shall provide separate site-specific or region-specific preventive measures, as necessary, for the activities.

(b) A person responsible for preparing a groundwater protection plan governed by this section may use a generic groundwater protection plan prepared by another person or group, including a trade organization, if:

1. The activities established in the generic groundwater protection plan are substantially identical;

2. The factors established in Section 1(2) of this administrative regulation do not cause substantial differences in the potentials to pollute among locations; and

3. The groundwater protection plan has been reviewed and approved by the cabinet as established in this administrative regulation.

(c) A generic groundwater protection plan may consist of requirements imposed by other regulatory programs designed to protect groundwater or programs offering technical assistance for groundwater protection if the cabinet has approved the requirements of the other program as a generic groundwater protection plan. A person using a generic groundwater protection plan from another program pursuant to this paragraph as a part of, or all of, the plan shall certify in the plan that the plan is subject to the program and in compliance with its provisions. Any activities that are not addressed by the program shall be addressed separately in the groundwater protection plan.

(d)

1. A person conducting an activity established in this subsection who does not prepare a groundwater protection plan for that activity or does not use another approved generic groundwater protection plan for that activity shall implement the provisions of the generic groundwater protection plan prepared by the cabinet.

2. The cabinet, in cooperation with other appropriate state agencies, shall prepare generic groundwater protection plans for:

a. Use of existing residential septic systems; and

b. Construction, operation, closure, and capping of water wells.

(e)

1. A generic groundwater protection plan that has been approved by the cabinet as established in this administrative regulation may be incorporated by reference in a facility's groundwater protection plan.

2. Each person responsible for implementing the generic plan at a site shall maintain a copy of the plan at an appropriate, accessible location.

3. A person using a generic groundwater protection plan shall identify the activities governed by the plan and attach the identification to the copy of the generic plan.

(f)

1. A person preparing a new or revised generic groundwater protection plan person shall also place a notice in a statewide newspaper and a trade publication likely to be read by those affected by the groundwater protection plan. That notice shall:

a. Provide for a thirty (30) day comment period;

b. Identify activities that are addressed by the proposed generic groundwater protection plan; and

c. Describe the procedure for review by the public of the plan and the procedures and time frames for providing comments.

3. The cabinet shall also notify by mail or email anyone who has requested in writing to be placed on a mailing list for purposes of this administrative regulation.

Section 3. Implementation of Groundwater Protection Plans.

(1) Record retention requirements.

(a) A site-specific groundwater protection plan required by Sections 1 through 3 of this administrative regulation, and documentation evidencing compliance with the provisions of the plan, shall be retained by the person responsible for implementing the plan, at the location of the activity if the location is normally attended at least eight (8) hours per day, or at the nearest office of that person's activity if the facility is not so attended.

(b) A generic groundwater protection plan and documentation evidencing compliance with the provisions of the plan shall be retained by the person responsible for implementing the plan in as many locations as necessary to ensure compliance.

(c) All records evidencing compliance shall be maintained and available for review by the cabinet for a period of not less than six (6) years after their preparation.

(2) Amendment of groundwater protection plans. Prior to conducting any new or modified activity, a person conducting that activity shall amend the groundwater protection plan to address the new or modified activity.

(3) Review and recertification of groundwater protection plans. Each groundwater protection plan shall be reviewed in its entirety every three (3) years, by the persons responsible for the plan, updated if necessary, and recertified. To the

extent possible, the review shall include a reevaluation of the design and operation procedures for the pollution prevention practices previously selected for the plan to ensure that they are effective.

(4) Submission of groundwater plans to cabinet.

(a) Upon written request of the cabinet, a person required to prepare a groundwater protection plan pursuant to this administrative regulation shall submit a copy of the plan to the cabinet within thirty (30) days of the date of the request.

(b) Upon written request of the cabinet, a person who has made a determination pursuant to Section 1(2) of this administrative regulation that a groundwater protection plan is not required for a specific activity shall submit a written demonstration to the cabinet within thirty (30) days of the date of the request.

(5) Submission of additional information to the cabinet. Upon review of a groundwater protection plan that has been submitted to the cabinet, the cabinet may require a person responsible for preparation or implementation of a plan to submit any of the information in this sub-section to determine if the plan is protective of groundwater:

(a) For a site-specific groundwater protection plan, and for a generic groundwater protection plan in effect at a specific location, the location of all buildings, structures, roads, utilities, drainage pathways, and boundaries by using a narrative description or by using a map, diagram, or drawing;

(b) For a generic groundwater protection plan that applies to more than one (1) location, identification of the geographic region to which the generic groundwater protection plan applies, and an explanation of why that region was selected and why one (1) plan is appropriate for all activities addressed by the plan for all sites within the region;

(c) For a generic groundwater protection plan that applies to more than one (1) location, to the extent possible, a description of the nature and number of activities, and their associated facilities, that are expected to be governed by the generic groundwater protection plan;

(d) A Summary of reasonably available hydrogeologic information including:

1. Identification of location of sinkholes, sinking streams, springs, streams, lakes, ponds, and ditches;

2. Description of soil survey information;
3. Identification and location of currently usable wells, abandoned wells, and wellhead protection areas;
4. Identification of subsidence areas; and
5. Description of any other relevant hydrogeologic data known to the person preparing or implementing the groundwater protection plan; and

(e) Any other information, including site-specific groundwater or geologic information, which is known and readily available to the person responsible for preparing or implementing the plan but not to the cabinet to determine if the plan is protective of groundwater.

(6) Revisions to plans after cabinet review.

(a) If the cabinet reviews a groundwater protection plan and determines that it does not comply with the requirements of this administrative regulation, the cabinet shall notify the person responsible for preparing or implementing the plan of the deficiency in the plan. That person shall revise the plan to correct the deficiencies identified by the cabinet and submit the revised plan to the cabinet for further review.

(b) The person submitting the revised plan shall have thirty (30) days from issuance of the notice of the deficiencies to submit the revised plan.

(c) The cabinet shall review the revised plan and notify the person submitting the revised plan of its final determination within ten (10) days of receiving the revised plan.

(7) Public inspection of groundwater protection plans.

(a) A person who desires to review a groundwater protection plan shall send a written request to the person required to prepare and to implement the groundwater protection plan.

(b) A person who receives a written request to review the groundwater protection plan shall within ten (10) working days:

1. Send a written response to the person requesting to inspect the groundwater protection plan stating that the groundwater protection plan may be reviewed at:

- a. The Division of Water in Frankfort;
- b. A regional office of the Division of Water;
- c. The facility;
- d. A local public library; or

2. Send a written response to the person requesting to inspect the groundwater protection plan stating the reason that a groundwater protection plan was not required to be prepared.

(c) A person who designates a review location for a groundwater protection plan shall send a copy of the groundwater protection plan to the location designated for review within ten (10) working days of receiving a written request to review the plan.

(8) Requirements upon transfer of property. Upon any subsequent transfer of a facility for which a groundwater protection plan has been prepared, the seller shall provide the purchaser with a copy of the most recent groundwater protection plan prepared for the facility pursuant to this administrative regulation.