



Kentucky Energy and Environment Cabinet  
Department for Environmental Protection

Advisory  
Memorandum

From: Anthony R. Hatton Commissioner *ARH*

Date: May 7, 2025

Subject: Senate Bill 89 Impact on Permits

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All discharges to waters of the Commonwealth require a permit through the Kentucky Pollutant Discharge Elimination System (KPDES). Senate Bill 89 was passed during the 2025 regular session of the Kentucky General Assembly amending the KRS 224.1-010 definition of "waters of the Commonwealth" as follows:

"Water" or "waters of the Commonwealth" means and includes:

- (a) Navigable waters, as defined in 33 U.S.C. sec. 1362;
- (b) Sinkholes with open throat drains;
- (c) Naturally occurring artesian or phreatic springs, as well as any other spring used as a source of domestic water supply; and
- (d) Wellhead protection areas;

that are situated wholly or partly within or bordering upon the Commonwealth or within its jurisdiction.

The amended definition of "waters of the Commonwealth" continues to require a KPDES permit for any discharge impacting navigable waters which are defined in 33 USC sec. 1362 as "waters of the United States" (see 40 C.F.R. 120.2); and sensitive features listed in subsections (b) through (d) above.

The agency will not be conducting a comprehensive independent review of all active KPDES permits to determine whether they are impacted by Senate Bill 89.

If a permittee has an active KPDES permit that may be subject to modification under the new definition and would like agency review, the permittee must submit a request in writing to the cabinet requesting a permit review. The request must identify the specific aspects (including outfalls) of the permit to be evaluated and provide sufficient detail to allow meaningful review. The Cabinet may require additional information for review and an on-site inspection could be required. Due to the new requirements from Senate Bill 89, permit approvals, including renewals, may take longer to complete than in the past. The Kentucky legislature did not provide the additional funding identified by the Cabinet to augment the permitting staff.

Senate Bill 89 did not alter the Cabinet's responsibility or authority to protect and enhance

Kentucky's environment or to safeguard public health. The Cabinet will continue to enforce existing law, including, but not limited to, releases under KRS 224.1-400, KRS 224.1-405, and KRS 224 Subchapters 40 through 60, as well as laws related to floodplains, resource protection, and stream restoration and mitigation pursuant to KRS 151.

Questions related to this Advisory Memorandum, Senate Bill 89 Impacts on Permits and/or coordination should be directed to the Commissioner of the Department for Environmental Protection, Anthony R. Hatton, via email at [Tony.Hatton@ky.gov](mailto:Tony.Hatton@ky.gov).