



Kentucky Energy and Environment Cabinet
Department for Environmental Protection

From: Anthony R. Hatton Commissioner

ARH

Date: May 29, 2025

Subject: Senate Bill 89 – Wellhead Protection
Areas, Open Throated Sinkholes, and Natural
Springs

Water
Advisory
Memorandum

WAM #3

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

- The amended definition of “waters of the Commonwealth” continues to require a KPDES permit for any discharge into navigable waters, which are defined in 33 USC sec. 1362 as “waters of the United States” (see 40 C.F.R. 120.2); or into or onto sensitive features listed in subsections (b) through (d) above. It should also be noted that a KPDES permit is required for any discharges that impact source waters flowing through those features that are included in (c).

Questions related to this Water Advisory Memorandum, Senate Bill 89 – Wellhead Protection Areas, Open Throated Sinkholes, and Natural Springs 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.