

AIR POLLUTION CONTROL DISTRICTS

A GUIDE FROM KLC MUNICIPAL LAW

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AIR POLLUTION CONTROL DISTRICTS

In order to play any game, you must first learn the rules. The same holds true for the law surrounding air pollution control districts. It is impossible to carry out the duties of air pollution control districts unless you familiarize yourself with the applicable state statutes, as well as your local ordinances, that govern.

Statutes are not contained in some magical spell book. There is no forbidden wisdom in a statutory code book. You do not need a law school education to understand their meaning. We wanted to remove some of the mystique from the law by compiling this simple pdf document. It contains the entire portion of Kentucky Revised Statutes which pertain to air pollution control districts.

Feel free to use this guide in any way that you deem fit. The reason we wanted to present this as a pdf though is because a pdf does have just a little bit of magic, truth be told. A pdf is word searchable. If you have the pdf on a laptop during a meeting and an issue comes up - you can plug the words in and hopefully the relevant portion of the law pertaining to air pollution control districts will pop up. Failing that, you can always call the KLC Municipal Law Department at 800.876.4552.

The KLC Municipal Law Team

77.005 Definitions for chapter

As used in this chapter, unless the context requires otherwise:

- (1) “Legislative body” means the chief legislative body of the city, whether it is the board of aldermen, general council, board of commissioners, or otherwise;
- (2) “Air contaminant” or “air contaminants” includes smoke, charred paper, dust, soot, grime, carbon, noxious acids, fumes, gases, odors, or particulate matter, or any combination thereof;
- (3) “District” means an air pollution control district;
- (4) “Largest city” means the city with the greatest population within the county based upon the most recent federal decennial census conducted by the United States Census Bureau;
- (5) “Person” means any individual, firm, copartnership, joint adventure, association, corporation, social club, fraternal organization, estate, trust, receiver, syndicate, any county, city, municipality, district (for air pollution control or otherwise), or other political subdivision, or any group or combination acting as a unit, and the plural as well as the singular unit; and
- (6) “Ringelmann Chart” means that standard published by the United States Bureau of Mines to determine the density of smoke.

77.010 Creation and boundaries of districts

- (1) In each county of the Commonwealth there is hereby created an air pollution control district.
- (2) The boundaries of every air pollution control district shall be coextensive with the boundaries of the county within which it is situated.

77.015 Action of fiscal court and city legislative body necessary to activate district

- (1) An air pollution control district shall not transact any business or exercise any of its powers under this chapter until or unless the fiscal court of the county within which such district is situated, by proper resolution, declares at any time hereafter that there is need for an air pollution control district to function in such county, provided:
- (2) For the creation of any air pollution control district after January 1, 2015, it shall also be necessary, before the district of such county is qualified to transact any business or exercise any of its powers under this chapter, that the legislative body of the largest city within the county, by proper ordinance, declare, at any time after the aforementioned resolution has been made by the fiscal court of such county, that there is need for an air pollution control district to function in such city.

77.020 Public hearings for determination of whether district shall function

The fiscal court of any county desiring to place its air pollution control district in operation and the legislative body of the largest city in such county must hold separate public hearings prior to and for the purpose of determining whether or not there is need for an air pollution control district to function.

77.025 Notice of hearings

Notice of the public hearing shall be given by the county conducting the hearing by publication pursuant to KRS Chapter 424.

77.030 Resolution of fiscal court to be based upon findings of fact

The fiscal court may adopt a resolution declaring that there is need for an air pollution control district to function if from the evidence received at such public hearing it finds:

- (1) That the air within such county is so polluted with air contaminants as to be injurious to health, or an obstruction to the free use of property, or offensive to the senses of a considerable number of persons, so as to interfere with the comfortable enjoyment of life or property;
- (2) And further that for any reason it is not practical to rely upon the enactment or enforcement of local ordinances to prevent or control the emission of smoke, fumes, or other substances which cause or contribute to such pollution.

77.035 Ordinance of city legislative body to be based upon findings of fact

The legislative body of the largest city in the county may adopt an ordinance declaring that there is need for an air pollution control district to function if from the evidence received at such public hearing it finds:

- (1) That the air within such city is so polluted with air contaminants as to be injurious to health, or an obstruction to the free use of property, or offensive to the senses of a considerable number of persons, so as to interfere with the comfortable enjoyment of life or property;
- (2) And further that for any reason it is not practical to rely upon the enactment or enforcement of local ordinances to prevent or control the emission of smoke, fumes, or other substances which cause or contribute to such pollution.

77.040 Form and sufficiency of resolution and ordinance

- (1) A resolution of the fiscal court declaring that there is need for an air pollution control district to function is sufficient if it finds that there is need for an air pollution control district to function, and finds in substantially the wording of KRS 77.030 that both the conditions enumerated therein exist. No further detail is necessary.
- (2) An ordinance of the legislative body of the largest city within the county declaring that there is need for an air pollution control district to function is sufficient if it finds that there is need for an air pollution control district to function, and finds in substantially the wording of KRS 77.035 that both the conditions enumerated therein exist. No further detail is necessary.

77.045 Certified copies of resolution and ordinance admissible in evidence

- (1) A copy of a resolution of the fiscal court declaring that there is need for an air pollution control district, duly certified by the county clerk, is admissible in evidence in any suit, action or proceeding.
- (2) A copy of an ordinance of the legislative body of the largest city within the county declaring that there is need for an air pollution control district, duly certified by the clerk of such legislative body, is admissible in evidence in any suit, action or proceeding.

77.050 Name and corporate powers of district

The district shall be known by and under the name of Air Pollution Control District of..... County, and under such name shall be a public body corporate and a political subdivision of the Commonwealth.

77.055 District to function immediately following activation; Conclusiveness of activation and organization

- (1) Upon the adoption of the resolution by the fiscal court of the county in which the district is to function, and, where necessary pursuant to KRS 77.015, the passage of the ordinance by the legislative body of the largest city within such county, the district shall immediately begin to function.
- (2) After the adoption of the resolution of the fiscal court of the county in which the district is to function, and the passage of the ordinance by the legislative body of the largest city within such county, the regular activation and organization of the district shall be finally and conclusively established against all persons except the Commonwealth of Kentucky upon suit commenced by the Attorney General. The activation and organization of said district shall not be directly or collaterally questioned in any suit, action or proceeding instituted by any other person.

77.060 General powers of district

- (1) The district shall have power to sue and be sued, contract and be contracted with, make rules and regulations and do all other things necessary to carry out the provisions of this chapter.
- (2) The district shall have the power to take by grant, purchase, gift, devise, or lease, hold, use, enjoy, and to lease or dispose of real or personal property of every kind within or without the district necessary to the full exercise of its powers. It shall also have the power to lease, sell or dispose of any property or any interest therein whenever in the judgment of the air pollution control board such property, or any interest therein, or part thereof, is no longer required for the purposes of the district, or may be leased for any purpose without interfering with the use of the same for the purposes of the district, and to pay any compensation received therefor into the general fund of the district.

77.065 County officers are ex officio officers and other personnel of district; exception for county containing city of first class or consolidated local government or county where largest city has population of 20,000 or more; effect of compact; employees of district upon establishment of consolidated local government

- (1) The members of the fiscal court of a county shall be, and they are hereby designated as, and empowered to act as, ex officio the air pollution control board of the air pollution control district in such county.
- (2) All county officers, their assistants, clerks, deputies, and employees, and all other county employees shall be ex officio officers, assistants, deputies, clerks, and employees respectively of the air pollution control district in the county in which they are employed. Except as otherwise provided in this chapter, they shall perform respectively the same various duties for the air pollution control district as for the county without additional compensation, in order to carry out the provisions of this chapter.
- (3) The provisions of subsections (1) and (2) of this section shall not be applicable to any county containing a city of the first class, or a consolidated local government, or to a county where the largest city in that county contains a population equal to or greater than twenty thousand (20,000) based upon the most recent federal decennial census.
- (4) Notwithstanding any provision of this chapter to the contrary, whenever a city of the first class and a county containing such city have in effect a compact under KRS 79.310 to 79.330, the county shall provide all staff support, including a secretary-treasurer and an air pollution control officer, to the air pollution control board through county officers, assistants, clerks, deputies and employees. In such case, the staff of the air pollution control board, including the secretary-treasurer and the air pollution control officer, shall be deemed county employees and shall be subject to the control of fiscal court. At the time the compact takes effect, the employees of the air pollution control district shall be transferred to the service of the county government; provided that all such employees who are in the classified service at such time shall be continued in the classified service administered by county government. Upon the establishment of a consolidated local government in a county where a city of the first class and a county containing that city have had in effect a cooperative compact pursuant to KRS 79.310 to 79.330, the employees of an air pollution control district shall be deemed to be employees of the consolidated local government and the provisions of this subsection shall be applied to the consolidated local government.

77.070 Air pollution control board, membership; qualifications; vacancies; removal; effect of compact; membership of board upon establishment of consolidated local government

- (1) In a county containing a consolidated local government or a city with a population equal to or greater than twenty thousand (20,000) based upon the most recent federal decennial census, the air pollution control board of the air pollution control district shall consist of seven (7) members, three (3) of whom shall be appointed by the county judge/executive, subject to the approval of the fiscal court, and four (4) of whom shall be appointed by the mayor. The mayoral appointments shall be subject to the approval of the legislative body of the city.
- (2) The mayor shall appoint, subject to the approval of the legislative body of the city, one (1) member for a term of one (1) year, one (1) member for a term of two (2) years, one (1) member for a term of three (3) years, and one (1) member for a term of four (4) years, and the county judge/executive, subject to the approval of the fiscal court, shall appoint one (1) member for a term of two (2) years, one (1) member for a term of three (3) years, and one (1) member for a term of four (4) years, and upon the expiration of each of said terms respectively, and thereafter, the term of each of such members shall be four (4) years,

and until their successors are appointed and qualified.

- (3) All air pollution control board members appointed pursuant to this section must be freeholders within the district; those appointed by the county judge/executive must be residents of such county, and those appointed by a mayor must be residents of their respective city or consolidated local government.
- (4) Not more than four (4) of the seven (7) board members appointed pursuant to this section shall be of the same political party affiliation, nor shall an officer or employee of such city, consolidated local government, or county, whether holding a paid or unpaid position, be eligible for appointment to the board.
- (5) A member of the air pollution control board is eligible to succeed himself or herself. A vacancy in the membership shall be filled by an appointee of the mayor or of the county judge/executive as the case may be, for the unexpired portion of the term. An appointee to a vacancy shall have the same qualifications as any regularly appointed member.
- (6) Any member of the board appointed by a mayor may be removed, for cause, after a hearing, by the legislative body of such city or consolidated local government, and after ten (10) days' notice in writing shall have been given to the member, which notice shall embrace the charges preferred against him. At the hearing he may be represented by counsel. The finding of the legislative body shall be final and removal results in vacancy in such office.
- (7) Any member of the board appointed by a county judge/executive may be removed, for cause, after a hearing, by the fiscal court of such county, and after ten (10) days' notice in writing shall have been given to the member, which notice shall embrace the charges preferred against him. At the hearing he may be represented by counsel. The finding of the fiscal court shall be final and removal results in vacancy in such office.
- (8) As used in this section "mayor" means the chief executive of the city or consolidated local government whether the official designation of his office is mayor, city manager, or otherwise.
- (9) Notwithstanding subsections (1) and (2) of this section, when a city of the first class and a county containing such city have in effect a compact under KRS 79.310 to 79.330, the air pollution control board shall consist of seven (7) members, four (4) of whom shall be appointed by the county judge/executive with the approval of the fiscal court and three (3) of whom shall be appointed by the mayor, with the approval of the legislative body, of the first-class city within such county. The terms of such members shall be three (3) years, and until their successors are appointed and qualified. Upon the effective date of the compact, the mayor, and county judge/executive with the approval of the fiscal court, shall adjust the terms of the sitting members so that the term of one (1) of each of their appointments expires in one (1) year, the term of one (1) of each of their appointments expires in two (2) years, and the term of one (1) of each of their appointments expires in three (3) years. The term of the then remaining member who was previously appointed by the mayor shall terminate immediately and the county judge/executive with approval of the fiscal court shall appoint a member for a one (1) year term. Upon the expiration of these staggered terms, successors shall be appointed for a term of three (3) years. Upon the establishment of a consolidated local government in a county where a city of the first class and a county containing that city have had in effect a cooperative compact pursuant to KRS 79.310 to 79.330, all members of the board shall be appointed by the mayor of the consolidated local government pursuant to the provisions of KRS 67C.139 for a term of three (3) years. Incumbent members upon the establishment of the consolidated local government shall continue to serve as members of the board for the time remaining of their current term of appointment.

77.075 Air pollution control board members to serve without compensation

All air pollution control board members shall serve without compensation other than recovery of actual expenses from the district funds.

77.080 Meetings of board

- (1) Regular meetings of each air pollution control board shall be held at least once in each calendar month. The time and place of the meetings shall be fixed by the board.
- (2) A majority of the members of the board shall constitute a quorum for the purpose of conducting business and exercising powers and for all other purposes. The affirmative vote of at least a majority of the membership of the board shall be necessary for the adoption of any motion, measure, or resolution, unless in any case the bylaws of the board require a larger number.

77.085 Election of chairman and vice chairman; secretary-treasurer and air pollution control officer; deputies, assistants, and other employees

- (1) An air pollution control board operating under KRS 77.070 shall, in July of each year, elect from its members a chairman and a vice chairman who shall be of different political party affiliation. The board shall employ a competent secretary-treasurer and an air pollution control officer, neither of whom shall be a member of the board. The secretary-treasurer and the air pollution control officer shall devote their entire time and attention exclusively to the services of the board.
- (2) The air pollution control officer shall be an engineer by profession and shall be a graduate of a recognized university or college, shall be thoroughly familiar with the theory and practice of the prevention and control of air pollution, and shall meet the qualifications for a nonelective peace officer stated in KRS 61.300.
- (3) The secretary-treasurer and the air pollution control officer may be removed by the board, for cause, after hearing by it and after at least ten (10) days notice in writing shall have been given to the secretary-treasurer or the air pollution control officer, as the case may be, which notice shall embrace the charges preferred against the person. At the hearing the person may be represented by counsel. The finding of the board shall be final.
- (4) The board may provide for assistants, deputies, clerks, attaches, and other persons to be employed by the secretary-treasurer and the air pollution control officer, and the times at which they shall be appointed.

77.090 Air pollution control officer, assistants, deputies and other employees in counties not containing a consolidated local government or a city with a population of 20,000 or more

- (1) In all counties other than those provided for in KRS 77.070 or 77.085, the air pollution control board of the air pollution control district may appoint an air pollution control officer, and may provide for assistants, deputies, clerks, attaches and other persons to be employed by the air pollution control officer, and the times at which they shall be appointed.
- (2) An air pollution control officer appointed pursuant to this section shall have the qualifications set forth in KRS 77.085.

- (3) Such air pollution control officer may be removed by the board, for cause, in the manner provided for the removal of air pollution control officers in subsection (3) of KRS 77.085.

77.095 Employment of professional, technical or other advisers, experts and employees

The air pollution control board of any air pollution control district in the Commonwealth may employ and remove at pleasure professional and technical advisers, experts, and other employees, skilled or unskilled, as it deems requisite for the performance of its duties.

77.100 Bond of secretary-treasurer, air pollution control officer and other officers and employees

An air pollution control board shall require the secretary-treasurer and the air pollution control officer each to execute bond, and may exact from such of its other officers and employees bonds as it may deem expedient. All such bonds shall be payable to the district in such sums as the board may fix with approved corporate surety, and premiums therefor shall be paid by the district. Such bonds shall obligate the makers thereof to faithfully perform the duties of their respective offices and positions and to fully account for and pay over all money, property or other thing of value of the district, which may come to their hands, respectively.

77.105 Hearing board; membership, qualifications, term, removal

- (1) The air pollution control board of an air pollution control district shall appoint a hearing board to consist of three (3) members, none of whom is a member of the air pollution control board, and only two (2) of whom may be of the same political party affiliation. Two (2) members of the hearing board shall have been admitted to practice law in this Commonwealth. Both shall be residents and freeholders of the district. Neither shall be otherwise employed by the air pollution control district or by any other municipal corporation or political subdivision of the Commonwealth. The third member of the hearing board shall be an engineer by profession, and shall be a graduate of a recognized university or college and shall be thoroughly familiar with the theory and practice of the construction and operation of furnaces and combustion devices, or in the theory of the prevention and control of air pollution. The latter member shall not be otherwise employed by the air pollution control district or the air pollution control board appointing the hearing board, but may be an employee of some other political subdivision or municipal corporation of the Commonwealth. He need not reside nor own property within the district.
- (2) The air pollution control board shall appoint one (1) member of the hearing board for a term of one (1) year, one (1) member for a term of two (2) years, and one (1) member for a term of three (3) years. Thereafter the terms of members of the hearing board shall be three (3) years. A member of the hearing board shall be eligible to succeed himself. A vacancy in the membership shall be filled by an appointee of the air pollution control board for the unexpired portion of the term. Such an appointee shall have the same qualifications as a regularly appointed member.
- (3) Any member of the hearing board may be removed by the air pollution control board, for cause, after a hearing by the air pollution control board, and after at least ten (10) days notice in writing shall have been given to the member, which notice shall embrace the charges preferred against him. At the hearing he may be represented by counsel. The finding of the air pollution control board shall be final, and removal results in vacancy in such office.

77.110 Persons ineligible to membership on boards or employment by district

Any person having any interest in the sale or control of any air pollution prevention equipment or apparatus which might be used effectively to reduce the emission of air contaminants shall not be eligible to be a member of an air pollution control board or of a hearing board, or to be the secretary-treasurer of an air pollution control board, or an air pollution control officer, or any assistant, deputy, clerk, attache, or employee of an air pollution control officer or secretary-treasurer, or to be any other employee of an air pollution control board or district.

77.115 Air pollution control board is governing body of district; duties, responsibilities, and regulatory authority of board; vehicle exhaust testing program; limitations; exemptions

- (1) The air pollution control board is hereby declared to be the governing body of an air pollution control district, and shall manage and control all the affairs and property of such district, and shall exercise all the powers of such district not otherwise delegated by this chapter. In a county where a city-county compact under KRS 79.310 to 79.330 is in effect or in a county where a consolidated local government has been established, the air pollution control board shall assume all of the duties and responsibilities of the hearing board appointed under KRS 77.105, and the hearing board shall be abolished.
- (2) Notwithstanding any provision of this chapter to the contrary, in a county where a city-county compact under KRS 79.310 to 79.330 is in effect or in a county where a consolidated local government has been established, the air pollution control board shall have regulatory authority for the district, and the city, consolidated local government, or county, as appropriate, shall exercise funding and administrative control of the district.
- (3) If an air pollution control board finds the need for and requires the implementation of a vehicle exhaust testing program, the program shall prohibit emissions of, regulate, or control only mobile sources of air pollutants regulated under the state program established in accordance with KRS 224.20-710 to 224.20-765.
- (4) In a county where the air pollution control board makes a finding of a need for and requires the implementation of a vehicle exhaust testing program, the board shall exempt from the program vehicles registered to military personnel on active duty whose duty station is outside of the county.

77.120 Compensation of officers and employees

The air pollution control board shall determine the compensation of, and pay from district funds, the secretary-treasurer of the air pollution control board, his assistants, deputies, clerks, attaches, and other employees, the air pollution control officer, his assistants, deputies, clerks, attaches, and other employees, the members of the hearing board, and all other employees of the air pollution control board. The salaries and compensation paid shall be in line with that paid by the county, or the largest city within the county, for similar services.

77.125 Appropriations by city and county

In order to provide money for carrying out the purposes of this chapter, the fiscal court of a county within which the air pollution control district has been activated and the legislative body of a city qualified to appoint members of the board pursuant to KRS 77.070 within such county, if there be any such city, may annually appropriate funds to such district. If there be such city within the county, the appropriation shall be in such proportion as may be agreed upon between the city legislative body and the fiscal court. Such funds shall be deposited in the treasury of the air pollution control district.

77.127 Air quality trust fund

- (1) In a county containing a consolidated local government or a city of the first class or a city having a population equal to or greater than twenty thousand (20,000) based upon the most recent federal decennial census, there is established within the air pollution control district a special trust fund to be known as the “air quality trust fund” to be used for conducting and funding air quality research and development projects, special nonrecurring air quality projects, and air quality education programs approved by the air pollution control board to assist in implementing the policies and purposes of this chapter.
- (2) All money collected for the fund shall be deposited by the district into an interest-bearing capital project account maintained by the fiscal court or consolidated local government of the county in which the district is located. Money shall be distributed from the account by the finance director of the county or consolidated local government based upon written authorization from the air pollution control board. Money unexpended at the close of a fiscal year shall not lapse but shall be carried forward for future use.
- (3) The fund shall not be used to support or finance the routine day-to-day activities and responsibilities of the district.
- (4) The air pollution control board shall, by regulation, set policies and establish procedures for the receipt and disbursement of any money collected under this section and for the full disclosure of the source and use of the money.
- (5) The air pollution control board shall control and manage the fund. It shall publish in writing at its June meeting each year an accounting of the income and disbursements of the fund.
- (6) Four (4) members of the air pollution control board shall constitute a quorum for conducting business relating to the air quality trust fund. When votes are taken on matters relating to the fund, each member shall have one (1) vote, and the affirmative vote of at least a majority of the votes cast shall be necessary for the adoption of any motion, measure, or resolution.
- (7) Members of the air pollution control board shall not solicit, but may accept, money by grant, gift, donation, bequest, civil or criminal penalty, or other conveyance to be credited to the air quality trust fund, but they may not accept penalties collected under KRS 77.990 for the air quality trust fund.

77.130 Fiscal year

The fiscal year of an air pollution control board district shall begin on the first day of July of each year and end with June 30 next following.

77.135 Budget; contingent fund; compliance with KRS 65A.010 to 65A.090

- (1) It shall be the duty of the secretary-treasurer of an air pollution control board formed pursuant to KRS 77.070, during or before the month of May of each year, to prepare and certify to the consolidated local government or fiscal court of the county and to the legislative body of the city, for their joint consideration, a preliminary budget showing the total funds which, in the judgment of the air pollution control board, will be needed for the various departments of the district, together with a statement showing the estimated balances, if any, which will be available on July 1 for expenditure during the next fiscal year following the certification of said statement, and also indicating, as nearly as may be possible, what additional funds or assets (other than appropriations) will be or will become available for expenditure during that year. The board shall also furnish to the consolidated local government

or the fiscal court and the city legislative body any other information or data available to it which the consolidated local government, the fiscal court, or the city legislative body may request.

- (2) Prior to the first day of each fiscal year, every air pollution control board shall prepare, for its own use and guidance, a financial budget setting forth the total amounts of funds available from all sources for expenditures during the said fiscal year, and also setting forth in detail the estimated expenditures of the board and the district during said fiscal year.
- (3) A contingent fund for unanticipated expenditures may be established in order to provide for such contingent and unanticipated needs as may arise during the district's said fiscal year.
- (4) All air pollution control boards shall comply with the provisions of KRS 65A.010 to 65A.090.

77.140 Accounting; audits and attestation procedures

- (1) The air pollution control board created pursuant to KRS 77.070 shall install and maintain a modern and efficient system of accounting and keep financial records. The board, however, may select and use the finance department of the consolidated local government or city to do its financial accounting and make its disbursements in a manner as may be agreed upon by and between the board and the director of finance of the consolidated local government or city, which work shall be done by the finance department without compensation from the board.
- (2) The Auditor of Public Accounts of the Commonwealth of Kentucky, the comptroller and inspector of the consolidated local government or the city, and the county auditor of such county, respectively, shall have access to the books and records of the board.
- (3) All air pollution control boards shall be subject to audit or attestation engagement procedures as provided in KRS 65A.030. In addition, at any other time upon the direction of the legislative body of a consolidated local government, or upon the direction of the fiscal court of the county, the county auditor shall make an audit of the board's accounts and report back thereon.

77.145 Duties of air pollution control officer; powers as peace officer

- (1) The air pollution control officer shall observe and enforce, within his air pollution control district:
 - (a) The provisions of this chapter;
 - (b) All orders, regulations, and rules prescribed by the air pollution control board of the air pollution control district pursuant to this chapter;
 - (c) All variances and standards which the hearing board has prescribed pursuant to this chapter.
- (2) In enforcing the provisions of this chapter and the orders, regulations, rules, variances, and standards of the air pollution control board and the hearing board, the air pollution control officer, his deputies and his assistants are peace officers.

77.150 Prohibitions inapplicable unless district activated

The provisions of KRS 77.150 to 77.175 do not apply within any air pollution control district unless and until, pursuant to resolution and ordinance as provided in KRS 77.010 to 77.060, such air pollution control district may function and exercise its powers.

77.155 Prohibited emission of air contaminants

- (1) A person shall not, nor shall an agent or employee of a person, nor shall a person as agent or employee of another, discharge into the atmosphere from any single source of emission whatsoever, any air contaminant in quantities and for a period or periods in excess of applicable emission standards established by regulation by the air pollution control board. Exceeding these standards shall constitute a rebuttable presumption of violation of this section.
- (2) A person shall not, nor shall an agent or employee of a person, nor shall a person as agent or employee of another, discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public or which endanger the comfort, repose, health, or safety of any such persons or the public or which cause or have a natural tendency to cause injury or damage to business or property. The board shall have power, by regulation, to fix reasonable limits, by weight or otherwise, for particular air contaminants or other material which in the opinion of said board may cause or have tendency to cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public. Exceeding such limits shall be a rebuttable presumption of violation of this section.

77.160 Operations exempted from provisions of KRS 77.155

The provisions of KRS 77.155 shall not be applicable:

- (1) To buildings used exclusively for single owner-occupied private residences. However, the provisions of KRS 77.155 shall be fully effective and applicable if a renovation, demolition, or cleanup of a building may cause a disturbance of asbestos material and:
 - (a) The building is one (1) of a group of buildings consisting of more than one (1) building under common control; or
 - (b) At the time of the renovation, demolition, or cleanup, the use of the building or the property is commercial or is not known. To all larger residential buildings of whatever type, KRS 77.155 shall be effective and applicable;
- (2) When a firebox, furnace, boiler, locomotive, or other fuel-consuming device is being cleaned out and a new fire is being built therein, in which event a smoke of a density as great or greater than that established by regulation by the air pollution control board shall be permitted for a period not to exceed six (6) minutes in any single period of sixty (60) minutes;
- (3) To equipment used for agricultural operations in the growing of crops, or raising of fowl or animals;
- (4) To smoke from fires set by or permitted by any public officer if such fire is set or permission given in the performance of the official duty of such officer for the purpose of weed abatement, the prevention of a fire or health hazard, or the instruction of public employees in the methods of fighting fire, which is, in the opinion of such officer, necessary.

77.165 Right of entry and inspection powers of air pollution control officer, assistants and deputies

The air pollution control officer, his deputies and assistants, during reasonable hours, for the purpose of enforcing or administering this chapter or of any order, regulation or rule prescribed pursuant thereto, may enter every building, premises, or other place, except a building designed for and used exclusively as a private residence and may stop, detain and inspect any vehicles whether designed for and used on a public highway, rails, or in any other manner. No person shall in any way deny, obstruct, or hamper such entrance, or such stopping, detaining or inspection of such vehicle, or refuse to stop such a vehicle upon the lawful order of the air pollution control officer, his deputy or assistant.

77.170 Stricter local regulation not preempted; local ordinances not superseded; exceptions

- (1) Except for subsection (3) of this section, the General Assembly does not, by the provisions of this chapter, intend to occupy the field except for requiring a county air pollution control board to exempt from the requirements of a vehicle exhaust testing program vehicles registered to military personnel on active duty whose duty station is outside of a county. Except for subsection (3) of this section, the provisions of this chapter do not prohibit the enactment or enforcement of any local ordinance stricter than the provisions of KRS 77.150 to 77.180 and stricter than the rules and regulations adopted pursuant to KRS 77.180 to 77.240, which local ordinance prohibits, regulates, or controls air pollution.
- (2) Except for subsection (3) of this section, and except for requiring a county air pollution control board to exempt from the requirements of a vehicle exhaust testing program vehicles registered to military personnel on active duty whose duty station is outside of a county, the provisions of this chapter do not supersede any such local ordinance. If it should be held that the provisions of this chapter supersede the provisions of any local ordinance, such suspension shall not bar the prosecution or punishment of any violation of such ordinance which violation was committed when such ordinance, was in full force and effect.
- (3) Local ordinances prohibiting, regulating, or controlling emissions from mobile sources of air pollutants shall prohibit emissions of, regulate, or control only mobile sources of air pollutants regulated under the state program established in accordance with KRS 224.20-710 to 224.20-765.

77.175 Violations may be enjoined

Any violation of any provision of KRS 77.150 to 77.175 may be enjoined in a civil action brought by the air pollution control board, the air pollution control officer, or any person aggrieved by such violation. Such abatement may be in addition to the fine hereinafter provided.

77.180 Orders, rules and regulations

- (1) The air pollution control board of an air pollution control district may make and enforce all needful orders, rules, and regulations necessary or proper to accomplish the purposes of this chapter for the administration of such district, and may perform all other acts necessary or proper to accomplish the purposes of this chapter.
- (2) Nothing in KRS 77.150 to 77.175 limits in any way the power of the air pollution control board to make needful orders, rules, and regulations pursuant to KRS 77.180 to 77.240. Nothing in KRS 77.150 to 77.175 permits any action contrary to any such order, rule, or regulation.

77.185 Public hearing to be held before enactment of orders, rules, or regulations; adoption of procedural rules for the promulgation of regulations

- (1) The air pollution control board shall not enact any order, rule, or regulation until it first holds a public hearing thereon. It shall give notice of the public hearing by publication pursuant to KRS Chapter 424.
- (2) The air pollution control board shall, by regulation, adopt procedural rules for the promulgation of regulations. These rules shall provide the public with a fair and reasonable opportunity for review of and comment on all proposed actions on regulations and shall ensure that the board provides full consideration to all written and oral comments prior to promulgating final regulations. The rules shall, at a minimum, provide the public with:
 - (a) At least thirty (30) days' notice prior to a public hearing on proposed actions on regulations;
 - (b) Copies of the proposed actions at the time of the notice;
 - (c) A written response to all comments submitted on the proposed actions;
 - (d) A written statement explaining the basis for any substantive amendments made to a proposed action on regulations after its initial proposal; and
 - (e) An assessment of the regulatory impact on the regulated community and the public of each proposed action on regulations. The regulatory impact assessment shall include the estimated costs and savings associated with the action, the feasibility of all alternatives considered, and a comparison with any minimum or uniform standards under the Clean Air Act of 1963 as amended by the Clean Air Act Amendments of 1990 or any other federal requirement. The board may rely on reasonably available information in assessing the regulatory impact of its regulatory actions. The regulatory impact assessment required by this subsection need not be developed when the proposed regulatory action is substantively identical to federal standards or requirements.

77.190 Authority to enact orders, rules and regulations for reduction of air pollution

Whenever the air pollution control board finds that the air in the air pollution control district is so polluted as to cause any discomfort or property damage at intervals to a substantial number of inhabitants of the district, the air pollution control board may make and enforce such orders, rules, and regulations as will reduce the amount of air contaminants released within the district.

77.192 Board to promulgate administrative regulations to implement federal statute relating to alternative emission limitations

The air pollution control board, in conjunction with the Energy and Environment Cabinet, shall promulgate administrative regulations, rules, and orders, to implement Section 7412(i)(5) of Title 42, United States Code, relating to alternative emission limitations allowed for early reduction of emissions.

77.195 Regulation of installations which may cause emission of air contaminants; issuance of permits; changes; submission of plans and specifications; exempted installations

- (1) The air pollution control board may require by regulation that before any person builds, erects, alters, replaces, operates, or uses any article, machine, equipment, or other contrivance specified by the regulation the use of which may cause the issuance of air contaminants, such person shall obtain a permit to do so from the air pollution control officer. The regulation may include the requirements of Title V of the Clean Air Act of 1963 as amended by the Clean Air Act Amendments of 1990 and 40 C.F.R. Part 70 State Operating Permit Programs.
- (2) The air pollution control board may require by regulation that it shall be unlawful for any person to violate any requirement of a permit issued by the district.
- (3) Insofar as the regulations do not grant an automatic permit for the operation of any source required to be permitted under the Federal Clean Air Act of 1963, as amended by the Clean Air Act Amendments of 1990, or under district regulations which are in existence upon the effective date of the regulations, a permit shall not be required without first affording the owner, operator, or user thereof a reasonable time within which to apply for such permit, and to furnish the air pollution control officer the information required pursuant to KRS 77.215.
- (4) This subsection shall not apply to sources required to have a permit before construction or modification under the applicable requirements of district regulations. In all other cases, if an applicant has submitted a timely and complete application for a permit, including renewals, but final action has not been taken on the application, the source's failure to have a permit shall not be a violation concerning the activities to be covered by the permit unless the delay in final action was due to the failure of the applicant to timely submit information required or requested to process the application. No source required to have a permit shall be in violation of district permit regulations before the date on which the source may be required to submit an application.
- (5) Compliance with a permit issued in accordance with district regulations shall be deemed compliance with any applicable requirements of this chapter and with district regulations as of the date of permit issuance if:
 - (a) The applicable requirements are included and are specifically identified in the permit; or
 - (b) The district, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.
- (6) The air pollution control district shall, by regulation, allow changes within a permitted source or one operating pursuant to a timely application under subsection (3) of this section, without requiring a permit revision, if the changes are not modifications under any provision of Title I of the Federal Clean Air Act of 1963 as amended by the Clean Air Act Amendments of 1990, and if the changes do not exceed the emissions allowable under the permit, whether expressed as a rate of emissions or in terms of total emission. The district may allow these changes without a permit revision only if the facility provides the United States Environmental Protection Agency and the district with written notification as required by district regulations at least seven (7) days in advance of the proposed changes, unless the district establishes, by regulation, a different schedule for emergencies.
- (7) The air pollution control board may require that before the air pollution control officer issues a permit to operate a source required to be permitted by district regulations or by the Federal Clean Air Act of

1963 as amended by the Clean Air Act Amendments of 1990, or issues a permit to build, erect, alter, or replace any equipment, that the plans, specifications, and compliance plan show, and that the permit issued by the air pollution control officer require, that the building, erection, alteration, or replacement will be done in such a manner, and that such approved equipment be used, as the air pollution control board finds will eliminate or reduce the discharge of any air contaminants.

- (8) A permit shall not be required for:
- (a) Any mobile equipment;
 - (b) Any structure designed for and used exclusively as a single owner-occupied private residence. However, if a renovation, demolition, or cleanup of a structure may cause a disturbance of asbestos material, and:
 - 1. The structure is one (1) of a group of structures consisting of more than one (1) structure under common control; or
 - 2. At the time of the renovation, demolition, or cleanup, the use of the structure or the property is commercial or is not known, then notice to the air pollution control officer shall be required and a permit may be required depending on the amount of asbestos material involved;
 - (c) Equipment used for agriculture operations in the growing of crops, or raising of fowl or animals; or
 - (d) Repairs or maintenance not involving structural changes to any equipment for which a permit has been granted. As used in this section, maintenance does not include operation.
- (9) The air pollution control board shall not, by regulation, order, or other legally enforceable means, require reductions in the emissions of oxides of nitrogen beyond those that are necessary to meet the provisions of the Federal Clean Air Act of 1963, as amended by the Clean Air Act Amendments of 1990, or regulations or other requirements of the United States Environmental Protection Agency, including, but not limited to, the requirements of Title I and Title IV of the federal act, the requirements for reasonably available control technology, and reductions that are submitted for inclusion in the Kentucky state implementation plan for attainment of maintenance of a national ambient air quality standard. This subsection shall not prohibit the air pollution control board from requiring, by regulation, order, or other enforceable means, a reduction in the emission of any other air contaminant that might have the incidental effect of reducing emissions of oxides of nitrogen.

77.200 Authority to contract with city or county for assistance in regulation of installations

- (1) The air pollution control board may contract with the county in which the air pollution control district is located, and may contract with any city within the district, and the county and any such city may contract with the air pollution control district, for the performance of such work in the name of, and subject to the approval of, the air pollution control officer by the building department or other officer, department, or agency of the county or such city charged with the enforcement of regulations pertaining to the erection, construction, reconstruction, movement, conversion, alteration, or enlargement of buildings or structures, as will accomplish all or part of the purposes of KRS 77.195.
- (2) In a county with a board formed pursuant to KRS 77.070, the contracts may provide for the consideration, if any, which the air pollution control district shall pay to the county or city.

- (3) In all other counties such contracts may provide for the consideration, if any, which shall be paid to the city. In no event shall any consideration be paid by the district to such counties for such services.

77.205 Annual emission fees; permit fees

- (1) The air pollution control board may provide by regulation a schedule of annual emission fees to cover all reasonable direct and indirect costs required to maintain authorization to develop and administer the district's permit program requirements under Title V of the Federal Clean Air Act of 1963 as amended by the Clean Air Act Amendments of 1990. Every person subject to a Title V permit shall pay the fee required by that schedule. Except as otherwise required under this section, the district's per-ton emission fee shall be computed as follows: the approved budget for the district's Title V permit program plus any deficit or minus any surplus from the previous fiscal year divided by the actual emissions of regulated pollutants in the previous year. The district shall exclude from the emission fee calculation the amount of a source's actual emissions of each regulated pollutant that the source emits in excess of four thousand (4,000) tons per year. Carbon monoxide shall not be considered a regulated pollutant for purposes of assessing fees pursuant to this subsection. All emission fees assessed by the district shall be expended to develop and implement the Title V permit program. Emission fees shall be deposited in an interest-bearing account with earned interest to be deposited in the account.
- (2) The air pollution control board may provide by regulation a schedule of permit fees to cover all reasonable direct and indirect costs required to develop and administer the district's non-Title V program.
- (3) Funds unexpended at the end of the fiscal year shall not lapse but shall be carried forward for future use as provided for in this section.

77.210 Payment of permit fees to city or county assisting in regulation of installations

A contract entered into pursuant to KRS 77.200 may provide that fees for permits shall be paid to the county or city, the officer, department, or agency of which county or city issues the permit, and may be retained by such county or city in whole or in part as the consideration, or part thereof, for issuing such permits. Otherwise, all fees paid for the issuance of permits shall be paid into the district treasury.

77.220 Suspension of permit for failure or refusal to furnish information concerning installation; notice; reinstatement

- (1) If the holder of any permit provided for by the regulations of the air pollution control board within a reasonable time willfully fails and refuses to furnish to the air pollution control officer information, analyses, plans, or specifications requested by such air pollution control officer, the air pollution control officer may suspend the permit. He shall serve notice in writing of such suspension and the reasons therefor on the permittee.
- (2) Within ten (10) days after receipt of notice of suspension the permittee may file with the hearing board a demand for a public hearing as to whether or not the permit was properly suspended.
- (3) The air pollution control officer shall reinstate a suspended permit when all information, analyses, plans, and specifications are furnished.
- (4) The air pollution control officer may reinstate a suspended permit where, in his opinion, good reasons exist therefor.

77.225 Public hearing on revocation or suspension of permit

- (1) The air pollution control officer may request the hearing board to hold a public hearing to determine whether a permit should be revoked, or a suspended permit should be reinstated.
- (2) Within thirty (30) days after either the air pollution control officer or the permittee has requested a public hearing the hearing board shall hold such hearing and give notice of the time and place of such a hearing to the permittee, to the air pollution control officer and to such other persons as the hearing board deems should be notified, not less than ten (10) days before the date of the public hearing.

77.230 Powers of hearing board after public hearing

After a public hearing, the hearing board may:

- (1) Continue the suspension of a permit suspended by the air pollution control officer; or
- (2) Remove the suspension of an existing permit invoked by the air pollution control officer pending the furnishing by the permittee of the information, analyses, plans, and specifications required; or
- (3) Find that no violation exists and reinstate an existing permit; or
- (4) Revoke an existing permit, if it finds:
 - (a) The permittee has failed to correct any conditions required by the air pollution control officer; or
 - (b) A refusal of a permit would be justified; or
 - (c) Fraud or deceit was employed in the obtaining of the permit; or
- (d) Any violation of this chapter or of any rule or regulation of the air pollution control board.

77.235 Violations

It shall be considered a violation of this chapter for any person to:

- (1) Knowingly make any false statement in any application for a permit or in any information, analyses, plans, or specifications submitted either in conjunction therewith, or at the request of the air pollution control officer; or
- (2) Build, erect, alter, replace, use, or operate any source capable of emitting air contaminants for which a permit is required by the regulations of the air pollution control district when his permit so to do has been either suspended or revoked; or
- (3) Build, erect, alter, replace, use, or operate any source capable of emitting air contaminants without first obtaining a permit so to do, where such permit is required by the regulations of the air pollution control board; or
- (4) Build, erect, alter, or replace, operate or use any such article, machine, equipment, or other contrivance contrary to the provisions of any permits issued under regulations adopted pursuant to KRS 77.180 to 77.240; or

- (5) Violate any order, rule, or regulation of an air pollution control district. Every day or portion thereof during which such violation occurs or continues is a separate offense; or
- (6) Fail or neglect to furnish information, analyses, plans, or specifications required by the air pollution control officer.

77.240 Injunctive relief for certain violations

Any violation of any provision of subsections (2), (3), (4), and (5) of KRS 77.235 may be enjoined in a civil action brought by the air pollution control board, the air pollution control officer, or any person aggrieved by such violation.

77.245 Variances may be permitted

The provisions of this chapter do not prohibit the discharge of air contaminants to a greater extent or for a longer time, or both, than permitted by KRS 77.150 to 77.175 or by rules, regulations, or orders of the air pollution control board, if not of a greater extent or longer time than the hearing board or a court after a hearing before the hearing board finds necessary pursuant to the provisions of KRS 77.245 to 77.275.

77.250 Hearings on variances; notice

- (1) The hearing board on its own motion or at the request of any person may hold a hearing to determine under what conditions and to what extent a variance from the requirements established by KRS 77.150 to 77.175 or by rules, regulations, or orders of the air pollution control board is necessary and will be permitted.
- (2) The hearing board shall serve a notice of the time and place of a hearing to grant a variance upon the air pollution control officer and upon the applicant, if any, not less than ten (10) days prior to such hearing.

77.255 Fees for variances

The air pollution control board may provide, by regulation, a schedule of fees which will yield a sum not exceeding the estimated cost of the administration of KRS 77.245 to 77.275, for the filing of applications for variances or to revoke or modify variances. All applicants shall pay the fees required by such regulations. All such fees shall be paid into the district treasury.

77.260 Standards prescribed for granting variances

- (1) If the hearing board finds that because of conditions beyond control compliance with KRS 77.150 to 77.175 or with any rule, regulation, or order of the air pollution control board will result in an arbitrary and unreasonable taking of property or in the practical closing and elimination of any lawful business, occupation or activity, in either case without a sufficient corresponding benefit or advantage to the people in the reduction of air contamination, it shall prescribe other and different requirements not more onerous applicable to plants and equipment operated either by named classes of industries or persons, or to the operation of separate persons; provided, however, that no variance may permit or authorize the maintenance of a nuisance.
- (2) In determining under what conditions and to what extent a variance from said requirements is necessary and will be permitted, the hearing board shall exercise a wide discretion in weighing the equities involved and the advantages and disadvantages to the residents of the district and to any lawful business,

occupation or activity involved, resulting from requiring compliance with said requirements or resulting from granting a variance.

77.265 Hearing on revocation or modification of variance; notice

- (1) The hearing board may revoke or modify by written order, after a public hearing held upon not less than ten (10) days' notice, any order permitting a variance.
- (2) The hearing board shall serve, by personal service or by certified mail, return receipt requested, notice of the time and place of a hearing to revoke or modify any order permitting a variance not less than ten (10) days prior to such hearing upon the air pollution control officer, upon all persons who will be subjected to greater restrictions if such order is revoked or modified as proposed and upon all other persons interested or likely to be affected who have filed with the hearing board or air pollution control officer a written request for such notification.
- (3) If either the identity or address of any person entitled to such notice is unknown, the hearing board shall serve such person by publication of notice once in a newspaper of general circulation published within the district if such newspaper is published therein, otherwise by posting at a public place at the county seat within the district.

77.270 Time limit may be specified in order permitting variance

The hearing board in making any order permitting a variance may specify the time during which such order will be effective, in no event to exceed one (1) year, but such variance may be continued from year to year without another hearing on the approval of the air pollution control officer.

77.275 Continuation of variances granted by prior ordinance

If any local ordinance has provided regulations similar to those in KRS 77.150 to 77.175 or to any order, regulation, or rule prescribed by the air pollution control board, and has provided for the granting of variances, and pursuant to the local ordinance a variance has been granted prior to the adoption of a resolution by the fiscal court and the passage of an ordinance by the legislative body, pursuant to KRS 77.010 to 77.060, or the passage of an ordinance by the consolidated local government, the variance shall be continued as a variance of the hearing board for the time specified therein or one (1) year, whichever is shorter, or until and unless prior to the expiration of such time the hearing board modifies or revokes such variance as provided in KRS 77.245 to 77.275.

77.280 Application of KRS 77.280 to 77.305 to certain hearings

KRS 77.280 to 77.305 applies to all hearings which KRS 77.180 to 77.275 provide shall be held by the hearing board.

77.285 Hearing board, chairman; rehearing

- (1) The hearing board shall select from its number a chairman.
- (2) The hearing board may hold a hearing en banc or may designate two (2) or one (1) of their number to hold a hearing.
- (3) If two (2) or three (3) members of the hearing board conduct a hearing the concurrence of two (2) shall be necessary to a decision.
- (4) The hearing board, not less than two (2) being present, may, in its discretion, within thirty (30) days rehear any matter which was decided by a single member.

77.290 Subpoenas

- (1) Whenever the members of the hearing board conducting any hearing deem it necessary to examine any person as a witness at such hearing, the chairman of the hearing board shall issue a subpoena, in proper form, commanding such person to appear before it at a time and place specified to be examined as a witness. The subpoena may require such person to produce all books, papers, and documents in his possession or under his control material to such hearing.
- (2) A subpoena to appear before the hearing board shall be served in the same manner as a subpoena in a civil action.

77.295 Enforcement of subpoenas by contempt proceedings; personal attachment

- (1) Whenever any person duly subpoenaed to appear and give evidence or to produce any books and papers before the hearing board neglects or refuses to appear, or to produce any books and papers, as required by the subpoena, or refuses to testify or to answer any question which the hearing board decides is proper and pertinent, he shall be deemed in contempt, and the hearing board shall report the fact to the judge of the Circuit Court of the county.
- (2) Upon receipt of the report, the judge of the Circuit Court shall issue an attachment directed to the sheriff of the county where the witness was required to appear and testify, commanding the sheriff to attach such person and forthwith bring him before the judge who ordered the attachment issued.
- (3) On the return of the attachment and the production of the body of the defendant, the Circuit Judge has jurisdiction of the matter. The person charged may purge himself of the contempt in the same way, and the same proceeding shall be had, and the same penalties may be imposed, and the same punishment inflicted as in the case of a witness subpoenaed to appear and give evidence on the trial of a civil cause before a Circuit Court.

77.300 Members of hearing board may administer oaths to witnesses

At any hearing the hearing board may require all or any witnesses to be sworn before testifying. Every member of the hearing board may administer oaths in every hearing in which he participates.

77.305 Appeals

- (1) Any person, being a party of record at such hearing, deeming himself aggrieved, including the air pollution control district, may maintain a special proceeding in equity in the Circuit Court of the county in which the district is located, to determine the reasonableness and legality of any action of the hearing board. Such special proceeding shall be entitled to priority on the docket of said equity court.
- (2) Any person filing such a special proceeding after any decision of the hearing board shall be entitled to a trial de novo and an independent determination of the reasonableness and legality of such action in such court on all issues of law, facts, and mixed questions of law and facts and opinions therein involved. Jurisdiction is hereby given such Circuit Court to determine all questions and issues properly brought before it on such appeal.
- (3) Appeals may be taken from the judgment of said Circuit Court to the Court of Appeals of Kentucky.

77.310 Proceedings for alleged violations of chapter or regulations and for petitions for a hearing on board orders or determinations; hearing officers

- (1) If there is reason to believe that a violation of this chapter or of a regulation promulgated under this chapter has occurred within an air pollution control district, the district shall issue and mail to or serve upon the person complained against a written notice of the provision of this chapter or the regulation allegedly violated. The district may schedule a settlement conference before the air pollution control officer or a designee at which the person complained against may appear to answer the charges set out in the notice. The conference shall be scheduled at a time not less than thirty (30) days after the date of notice unless the person complained against waives in writing the thirty (30) day period. Alleged violations that remain unresolved may be scheduled for a hearing under subsection (3) of this section at a time not less than thirty (30) days after a determination that the violation is unresolved unless the person complained against waives in writing the thirty (30) day period. The scheduling of a settlement conference or hearing shall not prevent the negotiation of a settlement of a violation prior to the conference or hearing. At any time, the air pollution control board may determine that a violation shall be resolved as a civil or criminal action in an appropriate court or referred for action to either the United States Environmental Protection Agency or the Energy and Environment Cabinet instead of being resolved as a district action.
- (2) When permittees or persons not previously heard in connection with the issuance of an order or the making of a determination including, but not limited to, the issuance, denial, modification, or revocation of a permit, consider themselves aggrieved, they may file with the district a petition for a hearing. The petition shall allege that the order or determination is contrary to law or fact and is injurious to the petitioner, stating the grounds and reasons, and demanding a hearing. Unless the board considers the petition frivolous, the air pollution control officer shall serve written notice of the petition on each person named therein and shall schedule a hearing not less than sixty (60) days after the date of the petition unless the person complained against waives in writing the sixty (60) day period. The right to demand a hearing under this section shall be limited to a period of thirty (30) days after the petitioner has had actual notice, or could reasonably have had notice, of the order or determination complained of. Prior to the hearing, the air pollution control officer may require the parties to meet for settlement purposes.
- (3) Hearings of unresolved violations or petitions for a hearing on orders or determinations shall be held before a qualified hearing officer who, in the discretion of the district, may serve by contract, be paid on a per diem basis, or be a full-time employee of the county not assigned to the district. The district shall provide written notice of the hearing to the person alleged to be in violation or to the petitioner.

After the conclusion of the hearing, the hearing officer shall, within thirty (30) days, make a report and recommended order, which shall contain findings of fact and conclusions of law, to the secretary-treasurer. If the secretary-treasurer finds upon written request of the hearing officer that additional time is needed, the secretary-treasurer may grant an extension. The hearing officer shall serve a copy of the report and recommended order upon all parties of record to the proceedings, and the parties shall be granted the right to file exceptions within fourteen (14) days of receipt. The secretary-treasurer shall schedule a time for the air pollution control board to consider the report, exceptions, and recommended order and to decide the case. The decision shall be served by mail upon all parties and shall be a final order of the board. No order of the board on a Title V permit shall become final for appeal purposes until it is approved by the United States Environmental Protection Agency under the Federal Clean Air Act of 1963 as amended by the Clean Air Act Amendments of 1990.

- (4) The hearing officer shall preside at the hearing, shall keep order, and shall conduct the hearing in accordance with reasonable administrative practices. A party to a hearing under this section may be represented by counsel, make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of these actions. The record of the hearing shall be open to public inspection, and copies thereof shall be made available to a person upon payment of the actual cost of reproducing the original, except as otherwise provided in district regulations.

77.315 Appeals from final orders of board; appeals from Circuit Court orders

- (1) Appeals may be taken from a final order of the board rendered after a hearing. An appeal shall be taken within thirty (30) days from the rendition of an order to the Circuit Court of the county in which the district is located. A person affected by the order shall file in the Circuit Court a petition which states fully the grounds upon which a review is sought and assigns all errors relied upon. The district shall be named respondent. Notice shall be given by the appellant to all parties of record to the prior proceedings. Service on the district shall be had on the secretary-treasurer. Summons shall issue upon the petition directing the district to send its entire record, properly bound, to the clerk of the Circuit Court after certifying that the record is its entire original record or a true copy thereof, which shall be filed by the clerk of the Circuit Court and shall then become official and be considered by the Circuit Court on the review. After the case has been properly docketed in the Circuit Court, a person directly affected by the issues on appeal may, upon notice to the parties, upon proper showing, and in the discretion of the court, be permitted to intervene. Upon hearing of the appeal, the findings of the district shall constitute a rebuttable presumption of the facts found therein. The court shall review the entire record and the findings and order of the district.
- (2) Appeals from orders of the Circuit Court shall be taken in the manner provided in the Kentucky Rules of Civil Procedure and the Kentucky Rules of Criminal Procedure.

77.320 Elimination of vehicle emissions testing program in county containing consolidated local government; determination of need for program

- (1) If by December 1 following the approval of a consolidated local government, the county containing the adopted consolidated local government has been notified by federal authorities of the attainment of the county of the air quality standards established by the Federal Environmental Protection Agency for ozone, carbon monoxide, and nitrogen dioxide, the air pollution control district board in that county shall upon July 15, 2002, begin the necessary actions to eliminate any vehicle emissions testing program operated in the county by November 1, 2003. The air pollution control district board shall not enter into or renew any contracts with any vendors for the operation of a vehicle emissions testing program which would extend beyond this date.

- (2) If a consolidated local government should be notified at a date beyond November 1, 2003, of the county's nonattainment of the air quality standards established by the Federal Environmental Protection Agency for ozone, carbon monoxide, and nitrogen dioxide, notwithstanding the provisions of KRS 77.115, 224.20-130, or 224.20-760 to the contrary, the consolidated local government shall determine the need for the reestablishment, administration, operation, and the role, if any, of an air pollution control district if a vehicle emissions testing program is re-created by the consolidated local government in accordance with KRS 224.20-710 to 224.20-765. Nothing in KRS Chapters 77 and 224 shall preclude a consolidated local government from utilizing other methods and procedures for reaching attainment of the air quality standards established by the Federal Environmental Protection Agency for ozone, carbon monoxide, and nitrogen dioxide.

77.990 Penalties

- (1) A person who violates any provision of this chapter shall be liable for the assessment by the district of a civil penalty not to exceed ten thousand dollars (\$10,000). Every day or any portion thereof during which the violation occurs or continues shall constitute a separate offense. If the violation is not settled by the payment of an assessment to the district, the district may proceed by a civil or criminal action with the penalties provided in subsections (2), (3), and (4) of this section. After a civil or criminal action reaches final adjudication in court, the district shall not assess a further civil penalty for the violation.
- (2) In a civil action, a person who violates any of the provisions of this chapter shall be liable for a civil penalty not to exceed ten thousand dollars (\$10,000). Every day or any portion thereof during which the violation occurs or continues shall constitute a separate offense.
- (3) In a criminal action, any person who violates any provision of this chapter shall be punished by a fine not to exceed ten thousand dollars (\$10,000) or by imprisonment for a term of less than ninety (90) days. Every day or any portion thereof during which the violation occurs or continues shall constitute a separate offense.
- (4) Any person who knowingly violates any provision of this chapter, or who knowingly provides false information in any document filed or required to be maintained under this chapter, or who knowingly renders inaccurate any monitoring device or method shall upon conviction be punished by a fine not to exceed ten thousand dollars (\$10,000), or by imprisonment for a term of not less than one (1) year and not more than five (5) years, or by both fine and imprisonment, for each separate violation. Every day or any portion thereof during which the violation occurs or continues shall constitute a separate offense.