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*Emily B Caudill*  
REGULATIONS COMPILER

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (Amendment)

5 401 KAR 42:011. Scope of Underground Storage Tank Program.

6 RELATES TO: KRS 224.10, 224.60, 40 C.F.R. Part 280 Subpart A, [~~Part 281,~~] 42

7 U.S.C. 6991c

8 STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105[~~, 40 C.F.R. Part 280~~

9 ~~Subpart A, Part 281, 42 U.S.C. 6991c]~~

10 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the

11 cabinet[~~Environmental and Public Protection Cabinet~~] to develop and conduct programs that

12 provide for the prevention, abatement, and control of contaminants that may threaten the

13 environment. KRS 224.60-105 requires the cabinet to regulate underground storage tanks[~~tank~~

14 (~~UST~~)-systems] by requiring registration, minimum construction and performance standards,

15 leak detection, recordkeeping, release reporting, corrective action, closure, financial

16 responsibility and other requirements[~~standards~~] to protect public health and the environment.

17 KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements

18 federal requirements for UST systems. [~~401 KAR Chapter 42 identifies requirements for UST~~

19 ~~systems.~~] This administrative regulation establishes the scope of the cabinet's Underground

20 Storage Tank Program, including provisions for exclusions and[~~;~~] deferrals[~~;~~] and interim

21 prohibitions].

1 Section 1. [~~Application of Federal Regulations. The requirements for program~~  
2 ~~applicability, interim prohibition requirements, and definitions for UST systems are governed by~~  
3 ~~40 C.F.R. Part 280 Subpart A and this administrative regulation.~~

4 Section 2.] Applicability, Exclusions and Deferrals. (1)The requirements of 401 KAR  
5 Chapter 42 shall apply to all owners and operators of UST systems, except as provided in  
6 subsections (3) and (4)[(1) and (2)] of this section.

7 (2) A UST system used for dual purposes, at least one (1) of which is regulated, shall  
8 meet the requirements of 401 KAR Chapter 42.

9 (3)[~~Any UST system listed in subsection (2) of this section shall meet the requirements of~~  
10 ~~Section 3 of this administrative regulation.~~

11 (4)] Exclusions. The following [UST systems] are excluded from the requirements of 401  
12 KAR Chapter 42:

13 (a) UST systems containing wastes identified as hazardous in 401 KAR Chapter 31, and  
14 UST systems containing mixtures of hazardous waste and other regulated substances;

15 (b) Wastewater treatment tank systems [that are part of a wastewater treatment facility  
16 regulated under the Clean Water Act, as amended (33 U.S.C. 1251 et seq.)];

17 (c) Equipment and machinery containing regulated substances for operational purposes,  
18 such as hydraulic lift tanks and electrical equipment tanks;

19 (d) UST systems having a capacity of 110 gallons or less;

20 (e) UST systems containing a de minimis concentration of regulated substances;

21 (f) Emergency spill or overflow containment UST systems that are emptied immediately  
22 after use; [and]

23 (g) Exclusions listed in KRS 224.60-100(1)(a) through (i);

1        (h) UST systems containing radioactive material that are regulated under the Atomic  
2 Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.);

3        (i) UST systems that are part of an emergency generator system at a nuclear power  
4 generation facility regulated by the Nuclear Regulatory Commission under Appendix A of 10  
5 C.F.R. Part 50;

6        (j) Airport hydrant fuel distribution systems; and

7        (k) UST systems with field-constructed tanks.

8        ~~(4)[UST systems excluded from the definition of "underground storage tank" provided in~~  
9 ~~KRS 224.60-100.~~

10        ~~(2)] Deferrals. With the exception of UST systems installed after April 1, 2012, 401 KAR~~  
11 ~~42:040 does not apply to UST systems that store fuel solely for use by emergency power~~  
12 ~~generators.[This subsection identifies UST systems that are deferred from compliance with some~~  
13 ~~of the requirements of 401 KAR Chapter 42.~~

14        ~~(a) 401 KAR 42:040 does not apply to UST systems that store fuel solely for use by~~  
15 ~~emergency power generators.~~

16        ~~(b) 401 KAR 42:020, 401 KAR 42:030, 401 KAR 42:040, and 401 KAR 42:050 do not~~  
17 ~~apply to the following UST systems:~~

18        ~~1. Wastewater treatment tank systems that are not part of a wastewater treatment facility~~  
19 ~~regulated under the Clean Water Act, as amended (33 U.S.C. 1251 et seq.);~~

20        ~~2. UST systems containing radioactive material that are regulated under the Atomic~~  
21 ~~Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.);~~

1           ~~3. UST systems that are part of an emergency generator system at a nuclear power~~  
2 ~~generation facility regulated by the Nuclear Regulatory Commission under Appendix A of 10~~  
3 ~~C.F.R. Part 50;~~

4           ~~4. Airport hydrant fuel distribution systems; and~~

5           ~~5. UST systems with field-constructed tanks.~~

6           ~~(3) Dual-purpose UST System. A UST system used for dual purposes, one (1) of which is~~  
7 ~~regulated, shall meet the requirements of 401 KAR Chapter 42.~~

8           ~~Section 3. Interim Prohibition for Deferred UST Systems.~~

9           ~~(1) Except as provided in subsection (2) of this section, a person shall not install a UST~~  
10 ~~system listed in Section 2(2) of this administrative regulation for the purpose of storing regulated~~  
11 ~~substances unless the system (whether of single or double wall construction):~~

12           ~~(a) Will prevent UST system releases due to corrosion or structural failure for the~~  
13 ~~operational life of the UST system;~~

14           ~~(b) Is cathodically protected against corrosion, constructed of noncorrodible material,~~  
15 ~~steel clad with a noncorrodible material, or designed in a manner to prevent a UST system~~  
16 ~~release; and~~

17           ~~(c) Is constructed or lined with material that is compatible with the stored substance.~~

18           ~~(2)(a) A UST system without corrosion protection may be installed at a UST facility that~~  
19 ~~is determined by a corrosion expert not to be corrosive enough to cause it to have a UST system~~  
20 ~~release due to corrosion during its operating life.~~

21           ~~(b) Owners and operators shall maintain records that demonstrate compliance with~~  
22 ~~paragraph (a) of this subsection for the remaining life of the tank.~~

1           ~~(3) The document incorporated by reference in Section 4 of this administrative regulation~~  
2 ~~shall be used in meeting the requirements of subsections (1) and (2) of this section.~~

3           ~~Section 4. Incorporation by Reference. (1) The National Association of Corrosion~~  
4 ~~Engineers Standard RP0285-2002, Item Number 21030, "Corrosion Control of Underground~~  
5 ~~Storage Tank Systems by Cathodic Protection", April 2002, is incorporated by reference.~~

6           ~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright~~  
7 ~~law, at the Underground Storage Tank Branch, 81 C. Michael Davenport Blvd., Frankfort,~~  
8 ~~Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.~~

9           ~~(3) This material may also be obtained by calling the Division of Waste Management at~~  
10 ~~(502) 564-5981 or on the Division's Web page located at [www.waste.ky.gov](http://www.waste.ky.gov).]~~

401 KAR 42:011 approved for filing.

4/24/11  
Date

  
Leonard K. Peters, Secretary  
Energy and Environment Cabinet

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on May 24, 2011 at 10:00 A.M. (Eastern Time) at 300 Fair Oaks, Frankfort, KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 2011, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Cassandra Jobe  
Division of Waste Management  
200 Fair Oaks, Second Floor  
Frankfort, KY 40601  
Telephone: (502) 564-6716 Fax (502) 564-4049  
Email: [Cassandra.Jobes@ky.gov](mailto:Cassandra.Jobes@ky.gov)

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cassandra Jobe

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the types of underground storage tanks that will be subject to the requirements of 401 KAR Chapter 42.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to establish the scope of the underground storage tank program.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation conforms to the content of the authorizing statute by establishing the scope of the underground storage tank program consistent with the federal program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation will assist in the effective administration of the statutes by establishing the scope of the underground storage tank program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

The amendment changes the existing administrative regulation by placing many of the UST systems that were previously deferred into the excluded category. It deletes the interim prohibition language.

(b) The necessity of the amendment to this administrative regulation:

This amendment is necessary to establish the scope of the underground storage tank program.

(c) How the amendment conforms to the content of the authorizing statutes:

The amendment conforms to the content of the authorizing statute by establishing the scope of the underground storage tank program that is consistent with the federal program.

(d) How the amendment will assist in the effective administration of the statutes:

The amendment will assist in the effective administration of the statute by excluding those underground storage tanks which will not be regulated by the agency.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

Anyone owning an underground storage tank that is not excluded in accordance with this administrative regulation will be subject to the requirements of 401 KAR Chapter 42.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

There are not actions to take in accordance with this amendment. This administrative regulation establishes the scope of the underground storage tank program. Many of the UST systems that were previously deferred have become excluded in this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

Not applicable.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Not applicable.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

It will not cost the agency any additional funding to implement this amendment.

(b) On a continuing basis:

It will not cost the agency any additional funding to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

This administrative regulation will be funded using tank fees and grants from the US EPA.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

There will be no need to increase fees to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or

indirectly increased any fees:

This amendment does not establish any fees.

(9) TIERING: Is tiering applied? (Explain why or why not)

Yes. The requirements of 401 KAR 42:040 do not apply to emergency generator underground storage tanks.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 401 KAR 42:011

Contact Person: Cassandra Jobe

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?

Yes X No \_\_\_\_\_

If yes, complete questions 2-4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

The Division of Waste Management; any agency with underground storage tanks

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

40 C.F.R. 280.10; KRS 224.60-105

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

This administrative regulation does not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

This administrative regulation does not generate revenue.

(c) How much will it cost to administer this program for the first year?

The Division of Waste will not incur additional costs to implement the amendment.

(d) How much will it cost to administer this program for subsequent years?

The Division of Waste will not incur additional costs to implement the amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

40 C.F.R. Subpart A

2. State compliance standards.

KRS 224.60-105

3. Minimum or uniform standards contained in the federal mandate.

40 C.F.R. 280.10; 40 C.F.R. 280.11

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

Yes. The federal mandate currently requires deferral of certain requirements for particular systems.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

The US EPA has notified states of draft language that is consistent with the approach for exclusions found in the proposed amendment to this administrative regulation.