

FILED WITH LRC
TIME: 11 am
JUL 15 2011
Emily B. Caudill
REGULATION'S COMPILER

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (Amended After Comments)

5 401 KAR 42:020. UST systems: design, construction, installation, and registration.

6 RELATES TO: KRS 224.01, 224.10, 224.60, 322, 322A, 40 C.F.R. Part 280 Subpart B,
7 ~~Part 281,~~ 42 U.S.C. 6991c, 42 U.S.C. 6991k, 42 U.S.C. 6991e

8 STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 42 U.S.C. 6991k, 42
9 U.S.C. 6991e~~[40 C.F.R. Part 280 Subpart B, Part 281, 42 U.S.C. 6991e]~~

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 requirements concerning performance

1 standards, registration, designated compliance managers and UST facility employees, and
2 alternatives for upgrading existing UST systems.

3 Section 1. Registrations. (1)(a) The owner shall submit, to the cabinet, a UST Facility
4 Registration Form, DEP 7112 for each UST facility within thirty (30) days of bringing a UST
5 system into operation.

6 (b) The form shall be signed by the owner and operator of the UST system; and

7 (c) The form shall be notarized.

8 (2)(a) Except as established in Section 2 of this administrative regulation, the owner shall
9 submit to the cabinet an amended UST Facility Registration Form, DEP 7112 within thirty (30)
10 days of any change to information contained within the most recently submitted UST Facility
11 Registration Form;

12 (b) The form shall be signed by the owner and operator of the UST system; and

13 (c) The form shall be notarized.

14 (3) An amended UST Facility Registration Form, DEP 7112 shall be submitted for a UST
15 system being placed into temporary closure for more than six (6) months.

16 (4) An unregistered UST system discovered during permanent closure activities
17 conducted in accordance with 401 KAR 42:070 shall be listed on the Closure Assessment Report
18 incorporated by reference in 401 KAR 42:070.

19 (5) With the exception of unregistered UST systems discovered during permanent closure
20 activities in accordance with subsection (4) of this section, an unregistered UST system that,
21 after October 1, 2011, is determined to have been in operation after January 1, 1974, shall
22 register in accordance with Section 1(1) of this administrative regulation.

1 Section 2. Change of Address for UST Owner. An owner shall notify the cabinet **within**
2 **thirty (30) days** of an address change by one (1) of the following:

3 (1) Submittal of an amended UST Facility Registration Form, DEP 7112; or

4 (2) Submittal of an Address Change Form for Owners of UST Systems, DEP
5 0060; [Application of Federal Regulations. (1) The requirements concerning performance
6 standards, registration, and alternatives for upgrading UST systems are governed by 40 C.F.R.
7 Part 280, Subpart B and this administrative regulation.

8 (2) 40 C.F.R. 280.22(b) allows for state forms to be used in lieu of federal forms for
9 registration of UST systems. The "UST Facility Registration Form", DEP 7112, (August 2006)
10 shall be used in meeting the requirements of this administrative regulation, 40 C.F.R. 280
11 Subpart B and 401 KAR 42:200.

12 Section 2. New Registrations. The current owner of a UST system or UST systems shall
13 notify the cabinet of the existence of the UST system or systems by completing the "UST
14 Facility Registration Form", DEP 7112, (August 2006). This form shall be submitted to the
15 cabinet no later than thirty (30) days after installation of the UST system or systems and shall be
16 signed by the owner and operator of the UST system or systems.

17 Section 3. Amended Registrations. (1) The owner or operator shall submit an amended
18 "UST Facility Registration Form", DEP 7112, (August 2006), that specifically indicates all
19 amendments, within thirty (30) days of any change to the following items:

20 (a) Owner or operator of the UST system or systems;

21 (b) Description of the UST system or systems; or

22 (c) Financial responsibility.

1 ~~(2) If an unregistered UST system or systems is discovered during permanent closure~~
2 ~~activities pursuant to 401 KAR 42:070, an amended "UST Facility Registration Form", DEP~~
3 ~~7112, (August 2006), shall be submitted to the cabinet to register the newly discovered UST~~
4 ~~system.]~~

5 Section ~~3.~~4. Changes of Ownership. (1) If ownership of a UST system changes, the new
6 owner shall complete and submit an amended ["]UST Facility Registration Form["], DEP 7112,
7 [~~(August 2006),~~] to indicate the new ownership. The form shall include the previously-assigned
8 agency interest number and shall be submitted to the cabinet within thirty (30) days after the
9 transaction.

10 (2) If an owner sells a UST system, the seller shall:

11 (a) Advise the new owner of the obligation to submit an amended ["]UST Facility
12 Registration Form["], DEP 7112, [~~(August 2006),~~] to the cabinet that indicates the change in
13 ownership; and

14 (b) Submit to the cabinet, within thirty (30) days after the transaction, a copy of the
15 properly-executed deed or other mutually-executed legal document supporting the sale of the
16 UST system, along with a letter indicating the UST facility name as registered with the cabinet,
17 the UST facility location, and the agency interest number.

18 Section ~~4~~5. Issuance of a Certificate of Registration and Reimbursement Eligibility.
19 Upon a determination by the cabinet that the ["]UST Facility Registration Form["], DEP 7112,
20 [~~(August 2006),~~] is complete and accurate, the cabinet shall issue a ["]Certificate of Registration
21 and Reimbursement Eligibility["], DEP 7113~~[, (August 2006)].~~ ~~Upon acceptance of the~~
22 ~~completed form, the cabinet shall assign an agency interest number and shall notify the owner,~~
23 ~~in writing, of the agency interest number.]~~

1 Section 5. Notification Requirements. Requirements for notification shall be as
2 established in 40 C.F.R. 280.22.

3 Section 6. Notice and Verification of Installation of Underground Storage Tank and
4 Piping. (1)(a) Owners shall submit the Notice of Intent to Install Underground Storage Tank or
5 Piping, DEP 8044, to the appropriate Division of Waste Management Regional Office at least
6 fourteen (14) days prior to installation of an underground storage tank or an entire piping run to
7 afford the division representative the opportunity to be present during installation;

8 (b) If a division representative fails to be present on the date scheduled for installation,
9 the installation may proceed.

10 (2) After April 1, 2012, owners and operators shall submit a Verification of Installation of
11 a UST System Tank or Piping, DEP 7115, to the cabinet within thirty (30) days after bringing a
12 UST system, tank or entire piping run into operation.

13 Section 7. Operational Training Requirements. (1) An owner of a UST system
14 registered, but not permanently closed, with the USTB prior to June 8, 2012 shall designate
15 at least one (1) individual, who shall be trained in accordance with subsections (5) and (6)
16 of this section by August 8, 2012, as the primary designated compliance manager (DCM)
17 for the registered UST system.

18 (2) An owner of a UST system registered, but not permanently closed, on or after
19 June 8, 2012 shall designate at least one (1) individual who shall be trained in accordance
20 with subsections (5) and (6) of this section within sixty (60) days of registration, as the
21 primary designated compliance manager (DCM) for the registered UST system.~~[By May 1,~~
22 ~~2012, owners or operators of UST systems at existing UST facilities shall designate at least one~~
23 ~~(1) individual, who shall be trained in accordance with subsections (5) and (6) of this section~~

1 within thirty (30) days of designation, as the primary designated compliance manager (DCM) for
2 a UST facility.

3 (2) After May 1, 2012, owners or operators of newly installed or newly acquired UST
4 systems shall designate at least one (1) individual, who shall be trained in accordance with
5 subsections (5) and (6) of this section within thirty (30) days of designation, as the primary
6 designated compliance manager (DCM) for a UST facility, within thirty (30) days of the
7 submittal of a UST Facility Registration Form, DEP 7112, unless an established primary DCM
8 designation has been maintained.]

9 (3) If the primary DCM no longer holds DCM status, the owner [or operator] shall,
10 within thirty (30) days, designate another individual as primary DCM who shall[, unless already
11 trained as an associate DCM,] obtain training in accordance with subsections (5) and (6) of this
12 section within thirty (30) days of designation.

13 (4)(a) Owners [or operators] shall designate a primary DCM who may receive
14 compliance related correspondence from the Underground Storage Tank Branch;

15 1. Owners [or operators] may designate themselves as the primary DCM, or

16 2. Owners [or operators] may designate another individual as the primary DCM;

17 (b) Owners [or operators] may designate multiple individuals as an associate DCM for a
18 UST system [facility].

19 (5) Operational training, in accordance with this administrative regulation, shall be
20 accomplished through use of the cabinet training system. Individuals unable to use or access the
21 cabinet training system shall contact the Underground Storage Tank Branch for alternate
22 designation and operational training procedures.

1 (6) Through completion of operational training in accordance with subsection (5) of this
2 section, a DCM shall demonstrate an in-depth understanding of:

3 (a) UST system operation, maintenance, inspection, and testing requirements including,
4 at a minimum: UST system spill prevention, overfill prevention, release detection, secondary
5 containment, corrosion protection, product compatibility, and notification requirements as
6 applicable to the current configuration of the UST system in accordance with this administrative
7 regulation and 401 KAR 42:030, and 42:040;

8 (b) UST system recordkeeping requirements in accordance with 401 KAR 42:030 and
9 42:040;

10 (c) UST system release reporting, release response, temporary closure, permanent
11 closure, initial abatement, and financial responsibility requirements in accordance with 401 KAR
12 42:050, 42:060, 42:070, and 42:090;

13 (d) All relevant equipment and its compliance with performance standards in accordance
14 with 401 KAR 42:030 and 42:040;

15 (e) Requirements for delivery prohibition in accordance with 401 KAR 42:045; and

16 (f) UST facility employee training requirements in accordance with Section 8 of this
17 administrative regulation.

18 (7) The owner [~~or operator~~] shall ensure that **the primary DCM**[all DCMs] successfully
19 repeat the training annually, within twelve (12) months of the most recent training date.

20 Section 8. UST Facility Employee Training Requirements. (1) The owner or operator
21 shall ensure that all employees associated with the operation of the UST system receive annual
22 training in the following areas:

23 (a) Response to an equipment alarms;

1 (b) Fire extinguisher operation;

2 (c) Spill and overflow response;

3 (d) Threat to the public or to the environment caused by spills or releases;

4 (e) Emergency shut-off procedures; and

5 (f) Contact telephone numbers in response to emergencies caused by a release or a
6 threatened release from a UST system.

7 (2) The owner or operator shall maintain a list of all employees trained in accordance
8 with this administrative regulation. The owner or operator shall maintain written records of all
9 training documentation supplied to UST facility employees and shall make those records
10 available to the cabinet upon request.

11 Section 9. Performance Standards for new UST systems. (1) Performance standards for
12 new UST systems shall be as established in 40 C.F.R. 280.20; and

13 (2) In addition to the performance standards in subsection (1) of this section, UST
14 systems installed after April 1, 2012 shall meet the performance standards of Section 11 of this
15 administrative regulation.

16 Section 10. Upgrading of existing UST systems: Upgrading requirements for existing
17 UST systems shall be established in 40 C.F.R. 280.21.

18 Section 11. Double-Walled Tanks and Piping. (1) All [new] UST systems installed, or
19 **UST systems changing from storage of a non-regulated substance to storage of a regulated**
20 **substance,** on or after April 1, 2012 shall be designed and manufactured with double-walled
21 construction, and shall meet the requirements in the UST System Installation and Maintenance
22 Outline, including continuous electronic interstitial monitoring.

1 (2) All existing single-walled piping shall be permanently closed in accordance with 401
2 KAR 42:070, when an associated UST is permanently closed.

3 (3) Owners and operators shall install double-walled piping in accordance with the UST
4 System Installation and Maintenance Outline when 100 percent of a piping run, extending from
5 the tank to the farthest dispenser or other end-use equipment, excluding connectors, is replaced.

6 (4) Newly installed piping that is associated with a newly installed UST system
7 dispenser, located in an area where a UST system dispenser did not previously exist, shall be
8 designed and manufactured with double-walled construction and shall meet the requirements in
9 the UST System Installation and Maintenance Outline.

10 (5) An existing tank may not be removed and reinstalled unless:

11 (a) The tank meets the requirements of the UST System Installation and Maintenance
12 Outline;

13 (b) The tank is inspected and tested by the equipment's manufacturer prior to being
14 reinstalled; and

15 (c) The owner or operator provides a written certification from the manufacturer that the
16 tank is suitable for reinstallation.

17 Section 12. Under-Dispenser Containment (UDC) and Sumps. (1) Beginning April 1,
18 2012, all newly installed UST system dispensers, located in an area where a UST system
19 dispenser did not previously exist, shall have **liquid-tight** UDC installed in accordance with this
20 administrative regulation and the UST System Installation and Maintenance Outline.

21 (2) If equipment below the shear valve used to connect an existing UST system dispenser
22 to the piping is replaced on or after April 1, 2012, **liquid-tight** UDC shall be installed in

1 accordance with this administrative regulation and the UST System Installation and Maintenance
2 Outline.

3 (3) All sumps containing product piping, installed in conjunction with a UST system
4 installed on or after April 1, 2012 shall meet the liquid-tight containment requirements in the
5 UST System Installation and Maintenance Outline.

6 (4) When replaced, a sump installed in accordance with subsection (3) of this section
7 shall meet the liquid-tight containment requirements in the UST System Installation and
8 Maintenance Outline. ~~[For all new or replaced tanks or piping installed on or after April 1,~~
9 ~~2012, the following UST system components, associated with the new or replaced tanks or~~
10 ~~piping, shall be contained within liquid-tight contained sumps in accordance with the~~
11 ~~requirements of the UST System Installation and Maintenance Outline:~~

12 ~~(a) All underground product piping connections at the top of a tank;~~

13 ~~(b) All submersible pumps; and~~

14 ~~(c) Any point where piping is joined underground;]~~

15 (5) Owners or operators shall maintain written records of all installations of sumps and
16 UDC, installed after April 1, 2012, for the operating life of the sump or UDC. These records
17 shall be made available to the cabinet upon request.

18 (6) When a sump sensor monitoring device detects the presence of a liquid, the owner or
19 operator shall ensure that the sump is immediately inspected.

20 (a)1. If free product is discovered within a sump, a suspected release shall be reported in
21 accordance with 401 KAR 42:050; and

22 2. Free product shall be recovered and disposed of properly;

1 (b) If liquid, other than free product, is discovered within a sump, the sump shall be
2 further inspected to determine the source of liquid infiltration and repaired as necessary.

3 Section 13. Emergency Shutoff Valves. (1) All pressurized piping systems which
4 connect tanks to UST system dispensers shall be installed with emergency shutoff valves for
5 each supply line at the base of each UST system dispenser.

6 (2) The emergency shutoff valves shall be rigidly anchored to the UST system dispenser
7 island or another appropriate anchoring point in a manner that allows the emergency shutoff
8 valve to close automatically in the event of severe impact to a UST system dispenser.

9 (3) An emergency shutoff valve found to be defective, inoperable, leaking, not
10 functioning as designed by the manufacturer, or not rigidly anchored shall be immediately
11 repaired or replaced by the owner or operator.

12 Section 14. Non-metallic Piping. (1) All new or replaced underground non-metallic
13 piping installed after April 1, 2012 shall meet or exceed the Standard for Safety established by
14 Underwriters Laboratories Inc. in Standard for Nonmetallic Underground Piping for Flammable
15 Liquids – UL 971.

16 (2) The owner or operator shall repair non-metallic piping in accordance with 401 KAR
17 42:030 or permanently close non-metallic piping in accordance with 401 KAR 42:070 if the
18 piping exhibits any of the conditions identified in UST Systems: Inspecting and Maintaining
19 Sumps and Spill Buckets, EPA 510-R-05-001.

20 Section 15. Extensions. (1) The owner or operator of a UST system may request an
21 extension to a deadline established by this administrative regulation or established by the cabinet
22 in writing pursuant to this administrative regulation.

1 (2) The extension request shall be submitted in writing and received by the Division of
2 Waste Management prior to the deadline.

3 (3) The cabinet may grant an extension, if the cabinet determines that an extension would
4 not have a detrimental impact on human health or the environment.~~[Section 6. Interior Lining~~
5 ~~Inspection. (1) The interior lining of a UST system shall be inspected ten (10) years after~~
6 ~~installation of the UST system. Follow-up inspections shall occur on five (5) year intervals.~~

7 ~~(2) The "Interior Lining Inspection Form", DEP 8050, (August 2006) shall be completed~~
8 ~~when an inspection is conducted and submitted to the cabinet within thirty (30) days of the~~
9 ~~inspection.]~~

10 Section 16[7]. Incorporation by Reference. (1) The following material is incorporated by
11 reference:

12 (a) "UST Facility Registration Form", DEP 7112, ~~(April 2011)~~~~[(August 2006)]~~;

13 (b) "Address Change Form for Owners of UST Systems", DEP 0060, (April 2011);

14 (c) "Certificate of Registration and Reimbursement Eligibility", DEP 7113, ~~(April 2011)~~;

15 (d) "UST System Installation and Maintenance Outline", ~~(July)~~~~[April]~~ 2011);

16 (e) "Notice of Intent to Install Underground Storage Tank or Piping", DEP 8044,
17 ~~(July)~~~~[April]~~ 2011);

18 (f) "Installation Verification and Compatibility Form", DEP 7115, ~~(July)~~~~[April]~~ 2011);

19 (g) "Standards for Nonmetallic Underground Piping for Flammable Liquids", July 1,
20 2005 Underwriters Laboratories Inc. UL-971; and

21 (h) "UST Systems: Inspecting and Maintaining Sumps and Spill Buckets", EPA 510-R-
22 05-001 (May 2005),~~[(August 2006)]~~; and

23 ~~(e) "Interior Lining Inspection Form", DEP 8050 (August 2006).]~~

1 (2)(a) This material may be inspected, copied, or obtained, subject to applicable
2 copyright law, at the Division of Waste Management, 200 Fair Oaks Lane, Second
3 Floor, [Underground Storage Tank Branch, 81-C. Michael Davenport Blvd.], Frankfort, Kentucky
4 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

5 (b) This material may also be obtained at the Division of Waste Management's Web site
6 at <http://waste.ky.gov/ust>. [by calling the Division of Waste Management at (502) 564-5981 or on
7 the division's Web page located at www.waste.ky.gov.]

401 KAR 42:020 approved for filing.

7/13/11

Date

L K Peters

Leonard K. Peters, Secretary
Energy and Environment Cabinet

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 requirements concerning performance standards, registration, designated compliance managers and UST facility employees, and alternatives for upgrading existing UST systems.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to incorporate the provisions required by the federal Energy Policy Act of 2005.

(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 incorporating the requirements of the federal program for underground storage tanks.

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

This administrative regulation assists in the effective administration of the statute by establishing minimum requirements for registration, performance standards, employee training, and upgrading of UST systems.

(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:

This amendment clarifies a timeline for submittal of an address change, changes the operator training deadlines, clarifies that UDC shall be liquid-tight, and clarifies sump installation and replacement language.

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

This amendment is necessary to clarify a timeline for submittal of an address change, change the operator training deadlines, clarify that UDC shall be liquid-tight, and clarify sump installation and replacement language.

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

This amendment conforms to the content of the authorizing statute by making changes that are consistent with the provisions of the federal Energy Policy Act of 2005.

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

This amendment will assist in the effective administration of the statutes by clarifying the requirements of the Energy Policy Act of 2005.

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

There are approximately 3,700 UST facilities in Kentucky, with approximately 11,500 underground storage tanks.

(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 new requirements for new UST systems going in the ground. The entities will have to install secondarily contained tanks and piping. There is also a requirement for verification of what was installed.

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

It should not cost an entity any more money to install a double-walled system than it would to install a single-walled system. The industry is moving to double-walled and the price is comparable to single-walled systems. There should not be a cost associated with filling out the forms required by this amendment.

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

By installing double-walled systems, there should be a less of a chance of a release to the environment from a UST system.

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

(a) Initially:

The new requirements for registration, installation, and verification should not cost additional funds from the agency to implement.

(b) On a continuing basis:

The new requirements for registration, installation, and verification should not cost additional funds from the agency to implement.

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

This administrative regulation is funded through 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:

An increase in fees will not be necessary 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 or affect any fees.

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

Tiering is not applied. The requirements for new installations after April 1, 2012 will all be the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 401 KAR 42:020

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

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 Subpart B; 42 U.S.C. 6991c; 42 U.S.C. 6991k; 42 U.S.C. 6991e; KRS 224.60

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 amendment will not generate any revenue for the agency.

(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 amendment will not generate any revenue for the agency.

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

There will be no additional costs to the agency to implement this amendment.

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

There will be no additional costs to the agency to implement this 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. 280 Subpart B; 42 U.S.C. 6991c, 42 U.S.C. 6991k, 42 U.S.C. 6991e
2. State compliance standards.
KRS 224.60-105
3. Minimum or uniform standards contained in the federal mandate.
40 C.F.R. 280 Subpart B; 42 U.S.C. 6991c, 42 U.S.C. 6991k, 42 U.S.C. 6991e
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?
No.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.
Not applicable

Detailed Summary of Material Incorporated by Reference

I. This administrative regulation incorporates by reference the “UST Facility Registration Form”, DEP 7112, (April 2011). This document is to be submitted by owners of underground storage tanks.

This document consists of 7 pages.

II. This administrative regulation incorporates by reference the “Address Change Form for Owners of UST Systems”, DEP 0060, (April 2011). This document is to be submitted by UST owners who wish to change only their address.

This document consists of 1 page.

III. This administrative regulation incorporates by reference the “Certification of Registration and Reimbursement Eligibility”, DEP 7113, (April 2011). This document is to be used by the Division of Waste Management and sent to owners and operators who register underground storage tank systems.

This document consists of 1 page.

IV. This administrative regulation incorporates by reference the “UST System Installation and Maintenance Outline”, (April 2011). This document is to be used when new UST systems are installed.

This document consists of 8 pages.

V. This administrative regulation incorporates by reference the “Notice of Intent to Install Underground Storage Tank or Piping”, DEP 8044, (April 2011). This document is to be submitted to the appropriate Division of Waste Management regional office 14 days before a new UST system is installed.

This document consists of 1 page.

VI. This administrative regulation incorporates by reference the “Installation Verification and Compatibility Form”, DEP 7115, (April 2011). This document is to be used to certify the compatibility and installation of the UST placed into the ground.

This document consists of 4 pages.

VII. This administrative regulation incorporates by reference the “Standards for Nonmetallic Underground Piping for Flammable Liquids”, July 1, 2005 Underwriters Laboratories Inc. UL-971. This document is to be used for all non-metallic piping installed after April 1, 2012.

This document consists of 52 pages.

VIII. This administrative regulation incorporates by reference the “UST Systems: Inspecting and Maintaining Sumps and Spill Buckets”, EPA 510-R-05-001 (May 2005). This document is to be used when inspecting non-metallic piping.

This document consists of 20 pages.

STATEMENT OF CONSIDERATION RELATING TO
401 KAR 42:020
Amended After Comments

Energy and Environment Cabinet
Department for Environmental Protection
Division of Waste Management

I. A public hearing on 401 KAR 42:020 was held on May 24, 2011 at 10:00 a.m. in Conference Room 301 D at 300 Fair Oaks Lane, Frankfort, Kentucky, 40601. No verbal comments were received on 401 KAR 42:020.

II. The following people submitted written comments:

<u>Name and Title</u>	<u>Affiliation</u>
Jack O'Grady	Tennessee Valley Authority
Lorri Zella, P.E.	American Electric Power (AEP)
Carl Greer, Vice President	Service Welding & Machine Company
Aaron Besmer, P.E.	Meijer
Rob Daniell, Manager	Underground Storage Tank Branch

III. The following people responded to comments:

<u>Name and Title</u>	<u>Affiliation</u>
Anthony Hatton, Director	Division of Waste Management
Rob Daniell, Manager, UST	Division of Waste Management
Cassandra Jobe, Supervisor, PPA	Division of Waste Management

IV. Summary of Comments and Responses

(1) Subject Matter: Operator Training Testing Requirement.

(a) Comment: Jack O'Grady, Tennessee Valley Authority (TVA).

TVA suggests that operators be required to test under the International Code Council's UST operator training program.

(b) Response:

The division disagrees. The cabinet is in the process of developing a site-specific operator training program that will be of no cost to the regulated community.

(2) Subject Matter: Operator Training Deadline.

(a) Comment: Jack O'Grady, Tennessee Valley Authority (TVA).

TVA suggests extending the deadline to August 8, 2012 to be consistent with the federal deadline for operator training.

(b) Response:

The division agrees. The language in 401 KAR 42:020, Section 7 has been amended to reflect the August 8, 2012 deadline for UST systems registered, but not permanently closed, prior to June 8, 2012. The June 8, 2012 deadline was chosen in order for the cabinet to be able to allow UST facilities coming into operation after that date 60 days to complete the required training for Designated Compliance Managers (DCMs).

(3) Subject Matter: DEP 7115

(a) Comment: Carl Greer, Service Welding & Machine Company.

It is unfair to iterate brand names of some tanks, thus excluding those not mentioned. Also, items which were iterated as examples do not fit the descriptions as identified.

The following is suggested:

1. Double Walled Fiberglass (UL1316)
2. Fiberglass jacketed steel tanks (UL1746, part 3)
NOTE: This category includes Permatank, Glasteel II and Plasteel technologies
3. Double walled steel with corrosion protection (UL1746, Part 2 or 4)
NOTE: This category includes ACT-100 and ACT-100U)
4. Other double wall technology

The above categories are consistent with industry and regulatory understanding of the various tank types on the market and not require brand name identification.

(b) Response:

DEP 7115 has been amended to remove brand names. UL listings have not been included on the form because UL test is not required for verification.

(4) Subject Matter: Acronym SMFO.

(a) Comment: Carl Greer, Service Welding & Machine Company.

The acronym SMFO is unknown. It should be SFMO for the State Fire Marshal's Office.

(b) Response:

The division agrees. The acronym has been changed to accurately reflect SFMO.

(5) Subject Matter: DEP 7115.

(a) Comment: Rob Daniell, Underground Storage Tank Branch

DEP 7115 has repeated sections for spill and overfill.

(b) Response:

The division agrees. The form has been amended to reflect the proper information.

(6) Subject Matter: UST Systems Installation and Maintenance Outline

(a) Comment: Aaron Besmer, Meijer.

Under "Figure 2 – Double-Walled Piping Illustrations", all (4) piping systems shown should note "Release detection sensor should be placed in the piping sump." This includes #2 and #3 (not just #1 and #4).

(b) Response:

The division agrees. Figure 2 has been removed.

(7) Subject Matter: UST Systems Installation and Maintenance Outline

(a) Comment: Aaron Besmer, Meijer.

Under "2.6 Design, Installation, and Maintenance Requirements for Liquid-Tight Sumps. In accordance with 401 KAR 42:020, all new or replaced piping installed after April 1, 2012, shall include the installation of liquid-tight containment sumps for: Connections at the top of a tank (e.g. submersible pumps, interstitial risers, automatic tank gauge (ATG) risers)" this statement is poorly worded and should be clarified so that interstitial risers and automatic tank gauge (ATG) risers are not required to be in containment sumps (don't believe this is the intent of the regulation, at least certainly not for interstitial risers).

(b) Response:

The division agrees. Language has been modified to clarify which sumps are required to be liquid-tight in 401 KAR 42:020 and the UST Systems Installation and Maintenance Outline.

(8) Subject Matter: UST Systems Installation and Maintenance Outline

(a) Comment: Aaron Besmer, Meijer.

Under "2.7 Design, Installation, and Maintenance Requirements for Under-Dispenser Containment (UDC). In accordance with 401 KAR 42:020, the installation of liquid-tight Under-Dispenser Containment (UDC) shall be required for all new or replaced dispensers, installed after April 1, 2012, when the following conditions exist:

- A new dispenser is installed in an area where a UST system dispenser did not previously exist; or
- The equipment below the shear valve (e.g. flexible connectors, risers, and other transitional components) used to connect the dispenser to the piping is replaced in conjunction with the replacement of an existing dispenser.

Having to install sumps when just replacing a dispenser seems pretty onerous.

(b) Response:

The Division disagrees. A dispenser can be replaced without replacement of any equipment below the shear valve. In that situation, UDC installation would not be required. The installation of UDC is required when equipment below the shear valve is replaced in conjunction with dispenser replacement. This is a requirement of the Energy Policy Act of 2005.

(9) Subject Matter: UST Systems Installation and Maintenance Outline

(a) Comment: Aaron Besmer, Meijer.

Under 5.0 WATER ACCUMULATION IN TANKS. Owners and operators shall remove any water accumulation within a tank that is identified through the use of a properly calibrated electronic monitoring device as soon as practicable. If the presence of water in the tank is caused by equipment failure or if the cause cannot be explained, then the

owner or operator shall immediately report a suspected release to the cabinet in accordance with 401 KAR 42:050, Section 1” does this mean having to pump water out if there is 0.25” due to snow melt or a bad delivery?

(b) Response:

The division changes this section to clarify that it’s 1” of water accumulation in the tank due to equipment failure or unexplainable causes. Changes made accordingly.

(10) Subject Matter: Change in Service

(a) Comment: Rob Daniell, Underground Storage Tank Branch

Double-walled system requirements should apply to tanks that have contained a non-regulated substance and will be switching to a regulated substance.

(b) Response:

The division agrees. Language has been added to clarify the requirements for double-walled systems in Section 11.

(11) Subject Matter: Installation Outline

(a) Comment: Rob Daniell, Underground Storage Tank Branch

References of sections incorrect and references of documents need updating. Language in Outline didn’t match reg.

(b) Response:

The division agrees. The outline has been amended to be consistent with the regulation.

(12) Subject Matter: Operator Training

(a) Comment: Lorri Zella, AEP

Operational training requirement under subsection 2 requires that owners or operators of newly installed or newly acquired UST system shall designate at least 1 individual as a compliance manager. This requirement seems duplicative with the UST operator certification requirements for all UST facilities, as the various classes of UST operator training certification for most facilities already address this requirement.

(b) Response:

The Division does not agree that this requirement is duplicative. The regulatory provision requiring the designation of a designated compliance manager meets the federal requirement for UST operator training for Class A and B operators as set forth in the guidance US EPA issued in accordance with the Energy Policy Act of 2005.

(13) Subject Matter: Operator Training

(a) Comment: Lorri Zella, AEP

DCM status under subsection 3 requires the appointment of a new DCM when the current DCM no longer holds the DCM status. The sentence “...Within 30 days designate another individual as primary DCM who shall unless already trained as an associate DCM...” is vague. The timing is confusing. Will the associate DCM be equivalent to a UST Class C operator?

(b) Response:

The federal guidance for the Energy Policy Act of 2005 established Class A, B, and C operators at UST facilities and the associated training requirements for each. The designation and training of a DCM satisfies the Class A and B operator training

requirement. While optional, the designation of an associate DCM is permitted by the Cabinet as a convenience to the owner. An associate DCM is not the equivalent of a Class C operator. Class C operators have the equivalence of UST facility employees. The training requirements are established in 401 KAR 42:020 Section 8. This has also been clarified with the change to section 7.

(14) Subject Matter: Operator Training.

(a) Comment: Lorri Zella, AEP

Via operational training, subsection 4 requires the DCM to have an in-depth understanding of several key items. The sentence, "Through completion of operational training in accordance with subsection (5) of this section a DCM shall demonstrate an in-depth understanding of...", is not specific as to whether this requirement applies to the primary or associate DCM. This subsection needs to be expanded to indicate if it's the primary DCM or the associate DCM that should complete the training.

(b) Response:

All DCMs have to complete the same training. Associate DCMs are allowed as a convenience to the UST system owner. The designation of a primary DCM is to facilitate on-site contact and correspondence from the cabinet regarding compliance related issues with the UST system.

(15) Subject Matter: Operator Training

(a) Comment: Lorri Zella, AEP

Owners or operators shall ensure that all designated compliance managers (DCMs) successfully repeat the training annually, within 12 months of the most recent training date. This requirement is overly burdensome as this should be required only in the event of a violation or if there is a UST equipment change at a facility. Very little operational changes occur within a 1yr period.

(b) Response:

The DCM and the UST system owner will be given a site specific management plan upon completion of annual training. The cabinet believes this will increase the compliance rate for UST systems. This site specific management plan will benefit the owner.

(16) Subject Matter: Product in a sump.

(a) Comment: Lorri Zella, AEP

Subsection 6a states that if free product is discovered within a sump, a suspected release shall be reported in accordance with 401 KAR 42:050. This requirement does not help to protect the environment since any free product is supposed to be contained in the sump.

(b) Response:

The Division disagrees. The purpose of a sump is to contain any free product that leaks from the UST system. A sump should NOT routinely contain product. The Division maintains that free product in a sump should be reported as a suspected release. Therefore, the cabinet has not made a change in response to this comment.

(17) Subject Matter: Address Change.

(a) Comment: Lorri Zella, AEP

A UST owner shall notify the cabinet of an address change. The proposed wording of the regulation does not state the specific timeframe for the notification of the address change. Revise the language of the regulation to specify a timeframe.

(b) Response:

The division agrees. The division has amended Section 2 of 401 KAR 42:020 to include a 30 day notification time frame.

V. Summary of Action Taken by Promulgating Agency

401 KAR 42:020: Comments were considered and the following changes are suggested:

Page 3

Section 2(1)

Line 1

After "cabinet", insert "within thirty (30) days".

Page 5

Section 7(1)

Line 13

After "(1)", insert "An owner of a UST system registered, but not permanently closed, with the USTB prior to June 8, 2012 shall designate at least one (1) individual, who shall be trained in accordance with subsection (5) and (6) of this section by August 8, 2012, as the primary designated compliance manager (DCM) for the registered UST system.

(2) An owner of a UST system registered but not permanently closed, on or after June 8, 2012 shall designate at least one (1) individual who shall be trained in accordance with subsections (5) and (6) of this section within sixty (60) days of registration, as the primary designated compliance manager (DCM) for the registered UST system."

Delete the remainder of subsections (1) and (2) in their entirety.

Page 6

Section 7(3)

Line 1

After "the owner", delete "or operator".

Page 6

Section 7(3)''''

Line 2

After "who shall", delete ", unless already trained as an associate DCM,".

Page 6

Section 7(4)(a)

Line 5

After "Owners", delete "or operators".

Page 6

Section 7(4)(a)1.

Line 7

After "Owners", delete "or operators".

Page 6

Section 7(4)(a)2.

Line 8

After "Owners", delete "or operators".

Page 6

Section 7(4)(b)

Line 9

After "Owners", delete "or operators".

Page 6

Section 7(4)(b)

Line 10

After "UST", insert "system".
Delete "facility".

Page 7

Section 7(7)

Line 9

After "the owner", delete "or operator".
After "ensure that", insert "the primary DCM".
Delete "all DCMs".

Page 8

Section 11(1)

Line 10

After "All", delete "new".
After "installed,", insert "UST systems changing from storage of a non-regulated substance to storage of a regulated substance."

Page 9

Section 12(1)

Line 9

After "shall have", insert "liquid-tight".

Page 9

Section 12(2)

Line 12

After "April 1, 2012", insert "liquid-tight".

Page 9

Section 12(3)

Line 14

After "All sumps", insert "containing product piping, installed in conjunction with a UST system".

Page 9

Section 12(4)

Line 16

After "(4)", insert "When replaced, a sump installed in accordance with subsection (3) of this section shall meet the liquid-tight containment requirements in the UST System Installation and Maintenance Outline."

Delete the remainder of subsection (4) in its entirety.

Page 11

Section 16(1)(d)

Line 22

After "Outline", insert "July". Delete "April".

Page 12

Section 16(1)(e)

Line 3

After "DEP 8044", insert "July". Delete "April".

Page 12

Section 16(1)(f)

Line 22

After "DEP 7115", insert "July". Delete "April".

The following changes were made to the documents, which were filed with the Amended After Comments version of the administrative regulation:

DEP 8044 and DEP 7115 were revised to correctly reflect the State Fire Marshal's Office.

The UST System Installation and Maintenance Outline was revised to reflect changes made due to comments.