



1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (Amendment)

5 401 KAR 42:050. UST system release reporting, investigation, and confirmation.

6 RELATES TO: KRS 224.10, 224.60, 40 C.F.R. Part 280 Subpart E, [~~40 C.F.R. Part~~  
7 ~~281,~~] 42 U.S.C. 6991c

8 STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105[~~, 40 C.F.R. Part 280~~  
9 ~~Subpart E, 40 C.F.R. 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  
12 ~~that~~[~~which~~] provide for the prevention, abatement, and control of contaminants which may  
13 threaten the environment. KRS 224.60-105 requires the cabinet to regulate underground storage  
14 tanks by requiring registration, minimum construction and performance standards, leak  
15 detection, recordkeeping, release reporting [~~UST system releases~~], corrective actions, closures,  
16 financial responsibility, and other requirements to protect public health and the environment.  
17 KRS 224.60-105(3) requires the cabinet to establish a regulatory program which implements  
18 federal requirements for underground storage tanks [~~and to promulgate administrative~~  
19 ~~regulations for underground storage tanks which shall be submitted for approval to the United~~  
20 ~~States Environmental Protection Agency pursuant to federal regulations. 401 KAR Chapter 42~~  
21 ~~identifies requirements for underground storage tanks~~]. This administrative regulation establishes

1 the requirements for reporting of suspected UST system releases, and investigation of off-site  
2 impacts.

3 Section 1. UST System Release Reporting. (1) Reporting of suspected releases shall be as  
4 established in 40 C.F.R. 280.50; and

5 ~~(2)[Application of Federal Regulations. The requirements for reporting of suspected UST~~  
6 ~~system releases and investigation of off-site impacts for underground storage tank systems are~~  
7 ~~governed by 40 C.F.R. Part 280 Subpart E and this administrative regulation.~~

8 ~~Section 2. Suspected UST System Release Reporting.]~~ A suspected or confirmed UST  
9 system release shall be reported immediately to the Environmental Response Branch[Team] at  
10 (800) 928-2380 or (502) 564-2380.

11 Section 2. Declared Environmental Emergencies for UST Systems. During the course of  
12 an environmental emergency declared by the Environmental Response Branch, the cabinet shall  
13 have the authority to prevent delivery, deposit, or storage of regulated substances and require all  
14 actions necessary to protect human health and the environment.

15 Section 3. Investigation due to off-site impacts. Investigations due to off-site impacts  
16 shall be as established in 40 C.F.R. 280.51.

17 Section 4. Suspected release investigation and confirmation steps. (1) Steps for suspected  
18 release investigation and confirmation shall be as established in 40 C.F.R. 280.52; and

19 (2) Owners and operator shall perform a site check in accordance with the Site Check  
20 Outline, incorporated by reference in 401 KAR 42:060, when directed in writing by the cabinet.

21 Section 5. Reporting and cleanup of spills and overfills. (1) Except as established in  
22 subsection (2) of this section, reporting and cleanup requirements for spills and overfills shall be  
23 as established in 40 C.F.R. 280.53;

1           (2) The reporting requirements for spills and overfills for diesel shall be as established in  
2 KRS 224.01-400(11).

3           Section 6.[Section 3.] Extensions. (1) With the exception of the reporting requirements  
4 in Sections 1(2) and 5 of this administrative regulation, the owner or operator of a UST system  
5 may request an extension to a deadline established by this administrative regulation or  
6 established by the cabinet in writing pursuant to this administrative regulation.

7           (2) The extension request shall be submitted in writing and received by the Underground  
8 Storage Tank Branch of the Division of Waste Management prior to the deadline.

9           (3) The cabinet may grant an extension, if the cabinet determines that an extension would  
10 not have a detrimental impact on human health or the environment.[With the exception of the  
11 reporting requirements in Section 2 of this administrative regulation, the owner or operator of a  
12 UST system may request an extension of the time frame for reports required by this  
13 administrative regulation. The extension request shall be submitted in writing and received by  
14 the Underground Storage Tank Branch of the Division of Waste Management prior to the  
15 deadline. The cabinet may grant extensions, if the cabinet determines that an extension would not  
16 have a detrimental impact on human health or the environment.]

401 KAR 42:050 approved for filing.

4/14/11  
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 release reporting requirements for USTs and the requirements for investigations.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to be consistent with the release reporting and investigation of off-site impacts required by federal regulation.

(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 implementing the federal requirements and by specifying the reportable quantity for diesel.

(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 statutes by establishing reportable quantities and procedures for releases from USTs.

(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 statute by breaking down the federal subpart into specific sections. The amendment also clarifies the reporting requirement for diesel. The amendment clarifies the role of the Environmental Response Branch during a declared emergency.

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

The amendment is necessary to be consistent with KRS 13A, and to clarify reporting requirements for diesel and the role of the Environmental Response Branch during a declared emergency.

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

The amendment conforms to the content of the authorizing statutes by referring to the federal requirements when applicable.

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

The amendment will assist in the effective administration of the statutes by imposing the

federal regulations when applicable, and the state reportable quantity for diesel.

(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 registered with the Division of Waste Management.

(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:

This amendment clarifies that UST facility owners and operators shall report confirmed UST system releases to the Environmental Response Branch.

(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 additional money to the UST system owner or operator to report a confirmed release.

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

By reporting a confirmed release, the UST system owner or operator may be eligible for PSTeAF reimbursement if corrective action is necessary.

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

(a) Initially:

There is no additional cost to the agency to implement this amendment.

(b) On a continuing basis:

There is no additional cost to the agency to implement this amendment.

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

Funding will come from tank fees, US EPA, and PSTeAF.

(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 administrative regulation does not establish or affect any fees.

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

Yes. The threshold for reporting a release for gasoline and diesel are different. However, the reporting requirements for spills and overfills are the same once the threshold quantity is met.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 401 KAR 42:050

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 Department for Environmental Protection

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

KRS 224.60-105; 224.01-400

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 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 amendment will not generate revenue.

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

There will be no additional cost in administering this amendment.

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

There will be no additional cost in administering 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 E

2. State compliance standards.

KRS 224.60-105; KRS 224.01-400

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

40 C.F.R. 280.50; 40 C.F.R. 280.51; 40 C.F.R. 280.52; and 40 C.F.R. 280.53

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

Yes.

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

The requirements for spill and overfill reporting for diesel fuel are statutorily set in KRS 224.01-400(11).