

FILED WITH LRC
TIME: 11am
JUL 15 2011
Emily B Caudill
REGULATIONS COMPILER

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (Amended After Comments)

5 401 KAR 42:330. Small Owners Tank Removal Account.

6 RELATES TO: KRS 224.60-105, 224.60-130(1)(a), (b), (j), 224.60-140, 224.60-150, 40

7 C.F.R. 280 Part H

8 STATUTORY AUTHORITY: KRS 224.60-130(1)(j)

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)(j) requires the
10 establishment of an account to reimburse small owners for the reasonable cost of permanent
11 closure, and authorizes the cabinet to promulgate administrative regulations to establish this
12 account. This administrative regulation establishes the eligibility requirements and rates for
13 reimbursement from the Small Owners Tank Removal Account (SOTRA).

14 Section 1. [~~Applicability. The provisions of this administrative regulation shall apply to~~
15 ~~petroleum storage tank owners meeting the requirements of Section 2 of this administrative~~
16 ~~regulation.~~

17 Section 2.] Eligibility. (1) To demonstrate eligibility, an owner shall submit a completed
18 ["]SOTRA Application for Assistance["], DEP 6067[, (August 2006)]. An owner shall be
19 eligible for reimbursement from this account if:

1 (a) The petroleum storage tank owner [~~demonstrates full or partial interest in ten (10) or~~
2 ~~fewer tanks and~~] meets the financial eligibility criteria of \$100,000 total income averaged over
3 the last five (5) years as documented by the applicant's signed federal income tax returns for the
4 last five (5) years, with the exception of Non-Profit Public Service Corporations, eligible
5 Governmental bodies and all other Non-Profit entities, which shall provide tax exemption
6 documentation and budgets for the last five (5) years[~~listed on the "SOTRA Application for~~
7 ~~Assistance", DEP 6067, (August 2006)];~~

8 (b) The tanks are located on a facility that is or was involved in the retail sale or
9 wholesale distribution of motor fuel;

10 (c) The tanks are registered with the Division of Waste Management by the applicant
11 seeking reimbursement from the Small Owners Tank Removal Account (SOTRA), pursuant to
12 KRS 224.60-105 and 401 KAR 42:020;

13 (d) The owner certifies that:

14 1. The retail sale or wholesale distribution of motor fuel at the facility from a UST system
15 or systems permanently cease upon permanent closure of the tanks; and

16 2. All known tanks at the facility are being removed or closed in place; and

17 (e) The owner has owned the tanks for more than one (1) year prior to the date of the
18 application for reimbursement from this account.

19 (2) A newly-discovered underground storage tank system shall not affect the eligibility of
20 an owner otherwise eligible [~~owner~~] in accordance with subsection (1) of this section.

21 (3) A tank shall not need to be in operation prior to its removal.

1 (4) A written notice shall be submitted to the applicable regional office at least fourteen
2 (14) calendar days prior to commencement of the permanent closure of the petroleum storage
3 tank to maintain eligibility for reimbursement.

4 (5) Federal and state-owned facilities shall not be eligible for reimbursement from the
5 Small Owners Tank Removal Account.

6 Section 2[3]. Account Use. (1) Funds in this account shall be used to reimburse eligible
7 petroleum storage tank owners for those reasonable and necessary costs incurred through
8 performance of actions required in 401 KAR 42:070.

9 (2) The use of this account shall be limited as specified in KRS 224.60-130(1)(j).

10 (3)(a) The owner of a facility shall be eligible for reimbursement of the cost of permanent
11 closure, but shall not be eligible for payment of corrective action cost from this account.

12 (b) If corrective action is required, eligible reimbursement shall be governed by 401 KAR
13 42:250.

14 (4)(a) If expenditures from this account exceed \$3,000,000 during any fiscal year, the
15 cabinet may suspend further reimbursements from this account. The suspension shall be in effect
16 until the cabinet determines that further reimbursements from this account will not threaten the
17 solvency of the Petroleum Storage Tank Environmental Assurance Fund.

18 (b) This determination shall be based upon legislatively-enacted budgets and associated
19 appropriations.

20 Section 3[4]. Application Procedure. (1) The owner shall file a completed SOTRA
21 Application[SOTRA-“Application”] for Assistance^[1], DEP 6067, [~~-(August 2006), incorporated~~
22 ~~by reference in this administrative regulation,~~] for participation in this account at least forty-five

1 (45) days prior to the permanent closure of the petroleum storage tank [~~or tanks~~]. The owner
2 shall also provide the following information:

3 (a) Verification of income through the submittal of[~~level by~~] copies of the applicant's
4 signed federal income tax returns for the last five (5) years, with the exception of Non-Profit
5 Public Service Corporations, eligible Governmental bodies and all other Non-Profit entities,
6 which shall provide tax exemption documentation and budgets for the last five (5) years;
7 [~~previous five (5) years' income tax returns;~~]

8 (b) A copy of the contract between the owner and the primary contractor;

9 (c) A facility map identifying approximate property boundaries, placement of petroleum
10 storage tanks within the tank pits, location of other relevant facility features including buildings,
11 canopies, driveways, piping, dispenser islands, paved areas, and the proposed extent of areas to
12 be excavated in the performance of permanent closure, including dimensions;[~~A site map~~
13 ~~delineating the facility boundaries and the location of all tank pits and areas to be impacted by~~
14 ~~the permanent closure; and]~~

15 (d) Color photographs of the facility and the areas to be impacted by the permanent
16 closure; and

17 (e) A copy of a deed or other documentation indicating ownership of the tanks, if the
18 tanks have not been registered in the applicant's name, in accordance with 401 KAR 42:020,
19 with the Division of Waste Management for twelve (12) months prior to the SOTRA application
20 being submitted.

21 (2) The owner shall retain a copy of the SOTRA Application for Assistance for their
22 records.

(3)(a) In response to the application submitted, the cabinet shall issue a letter setting forth the owner's eligibility status and the availability of funding for the closure of the petroleum storage tank.

(b) Permanent closure of the tank system shall not begin until the cabinet has approved the application and established the reimbursable amount. Failure to comply with this requirement shall result in denial of the reimbursement.

Section 4[5]. Permanent Closure Costs. The rates established for permanent closure costs in this section shall apply to a SOTRA Application for Assistance approved after October 6, 2011. (1)(a) Reimbursement from this account shall be determined from the lesser of two (2) dollars and sixty (60) cents (\$2.60) per gallon of tank capacity or the following matrix table:

Number of Tanks in Pit	Size of Largest Tank in Pit (gallons)			
	Less than 3,100	3,101 to 5,100	5,101 to 10,000	Greater than 10,000
1	\$3,900	\$4,420	\$6,370	\$7,020
2	\$6,370	\$7,150	\$9,620	\$11,180
3	\$8,320	\$9,750	\$12,610	\$15,340
4	\$10,270	\$11,700	\$15,340	\$18,200
5	\$12,220	\$13,650	\$17,940	\$21,970
Each Extra	\$1,950	\$1,950	\$2,340	\$2,860
Number of	Size of Largest Tank in Pit (gallons)			

Tanks in Pit	Less than 3,100	3,101 to 5,100	5,101 to 10,000	Greater than 10,000
1	\$3,000	\$3,400	\$4,900	\$5,400
2	\$4,900	\$5,500	\$7,400	\$8,600
3	\$6,400	\$7,500	\$9,700	\$11,800
4	\$7,900	\$9,000	\$11,800	\$14,000
5	\$9,400	\$10,500	\$13,800	\$16,900
Each Extra Tank up to 10	\$1,500	\$1,500	\$1,800	\$2,200

1 (b) In addition to the cost listed in subsection (1)(a) of this section, the cabinet shall
2 reimburse a one (1) time amount of \$2,095~~[\$2,000]~~, for the preparation and submission of a
3 Closure Assessment Report, incorporated by reference in 401 KAR 42:070. This shall include
4 the cost of preparing a classification guide. The cabinet shall also reimburse a one (1) time
5 amount of \$500~~[\$350]~~ for the mobilization and demobilization of equipment.

6 (c) If more than one (1) tank pit is located on a facility, the reimbursement shall be
7 calculated by adding the matrix table cost~~[value given]~~ for each pit, in addition to the costs
8 allowed in~~[plus an amount allowed by]~~ subsection (3) of this section.

9 (2) The following items~~[costs]~~ shall be included in the cost listed in subsection (1)(a) of
10 this section:

11 (a) Tank system removal, cleaning and disposal or closure-in-place requirements;

12 (b) Permanent closure of thirty-five (35)~~[twenty-five (25)]~~ feet of associated piping
13 outside of the tank pit;

1 (c) Removal of the pump island and canopy;

2 (d) Drumming [~~and disposal~~] of cleaning material;

3 (e) Backfilling to return the excavation to grade less the reimbursable volume of
4 contaminated backfill disposed or treated at a permitted facility and replaced in accordance with
5 subsection (3) of this section; [~~Additional backfill material may be reimbursed in accordance~~
6 ~~with subsection (3) of this section;~~]

7 (f) Concrete or asphalt surface removal;

8 (g) Equipment and material necessary for the permanent closure;

9 (h) Preparation of a permit if required for permanent closure or testing of a tank system;

10 (i) Excavation and loading of material;

11 (j) Collection of samples, including domestic-use wells, domestic-use springs and
12 domestic-use cisterns within a 100-meter radius of the UST system; and

13 (k) Labor charges relating to paragraphs (a) through (j) of this subsection.

14 (3) The costs of the following items [~~if necessary,~~] shall be allowed, if necessary, in
15 addition [added] to the cost established in subsection (1)(a) of this section upon the submittal of a
16 claim in accordance with Section 6 of this administrative regulation; [~~subject to the ranges set~~
17 ~~forth in the "Contractor Cost Outline", (August 2006), incorporated by reference in 401 KAR~~
18 ~~42:250~~];

19 (a) Facility restoration. Facility restoration activities shall only be reimbursable under
20 this account if a No Further Action Letter has been issued for the subject facility upon
21 completion of permanent closure activities in accordance with 401 KAR 42:070, without
22 corrective action activities being performed outside of the excavation zone. A cost estimate shall
23 be submitted, through the completion of Section 12 of the SOTRA Reimbursement Worksheet,

1 DEP0064, and shall be approved by the Underground Storage Tank Branch, in writing, prior to
2 incurring costs. Additional costs related to the repair of subsidence resulting from improper
3 placement of fill material shall not be reimbursable;[Surface replacement]

4 (b) Transportation, disposal or treatment, and replacement of[contaminated] backfill
5 contaminated above the applicable screening levels established in 401 KAR 42:080;

6 (c) Disposal of asphalt surface material;

7 (d) Installation of up to four (4) soil borings in accordance with Section 4.4 of the
8 Closure Outline;

9 [~~(d) Installation of up to three (3) monitoring wells, as required by 401 KAR 42:080. The~~
10 ~~cost of additional wells may be allowed if the additional wells are required in writing by the~~
11 ~~cabinet. An additional lump sum of \$500 shall be allowed for planning and reporting of the well~~
12 ~~installation and sampling;~~]

13 (e) Transportation and disposal, treatment,[Disposal] or recycling of tank contents or
14 waste;

15 (f) Removal, transportation and [off-site] disposal or treatment of water from within the
16 excavation zone in accordance with Section 4.1 of the Closure Outline, contaminated above the
17 applicable screening levels established in 401 KAR 42:080;[- if required;]

18 (g) Laboratory analysis, as required in accordance with the Closure Outline, with the
19 exception of laboratory analysis of samples collected in accordance with Section 6 of the Closure
20 Outline[- to the extent required]; and

21 (h) Grain size analysis for facilities accurately classified as Class B in accordance with
22 the Classification Outline, incorporated by reference in 401 KAR 42:080.

1 (4) Optional soil removal outside of the excavation zone in accordance with Section 6 of
2 the Closure Outline, incorporated by reference in 401 KAR 42:070 shall be reimbursed in
3 accordance with 401 KAR 42:250.

4 (5) Facility restoration for corrective action activities performed outside of the excavation
5 zone shall be reimbursed in accordance with 401 KAR 42:250.

6 ~~[(h) Optional soil removal outside of the excavation zone in accordance with Section 2.7~~
7 ~~of the "Closure Outline", (August 2006), incorporated by reference in 401 KAR 42:070.]~~

8 Section 5[6]. Claims. **Eligible reimbursement for permanent closure costs associated**
9 **with a SOTRA Application for Assistance approved prior to October 6, 2011 shall be made**
10 **in accordance with the administrative regulations in effect at the time the SOTRA**
11 **Application for Assistance was approved.** (1)(a) To receive reimbursement, an owner shall

12 submit a completed ["]SOTRA Claim Request["], DEP 6068; and

13 (b) The owner shall retain a copy of the form for their records.~~[-(January 2006).]~~

14 (2)(a) In addition to the completed claim form, the owner shall submit the required
15 SOTRA Reimbursement Worksheet, DEP0064;

16 (b) Documentation of actual cost, including invoices and weigh tickets, shall be attached
17 to the worksheet,~~[documentation in accordance with the "Contractor Cost Outline", (August~~
18 ~~2006) as incorporated by reference in 401 KAR 42:250.]~~

19 (3) The cabinet shall review a claim request for the following:

20 (a) The number and size of tanks removed; and

21 (b) Verification of eligible costs.

22 (4) To receive reimbursement, an owner shall have paid all annual tank fees as required
23 by KRS 224.60-150.

1 (5) The cabinet may request additional supporting documentation to verify the
2 reasonableness or necessity of a cost.

3 (6) If a claim is determined to be deficient by the Underground Storage Tank Branch, a
4 written deficiency letter, outlining the deficiencies, shall be issued to the applicant. Failure by
5 the applicant to provide the requested information and documentation within thirty (30) days of
6 receipt of the request shall cause the claim to be denied.

7 (7)[(6)] Reimbursement shall be contingent upon a determination by the cabinet that the
8 report required is complete and meets the requirements of 401 KAR Chapter 42.

9 (8) An entry level shall not be assessed for eligible reimbursement in accordance with
10 this administrative regulation, however an entry level shall be assessed upon confirmation of a
11 release, constituting an occurrence, that requires corrective action for which the applicant is
12 seeking reimbursement through the Financial Responsibility Account or Petroleum Storage Tank
13 Account in accordance with 401 KAR 42:250.

14 (9) All claims shall be submitted within two (2) years after issuance of a No Further
15 Action letter by the Underground Storage Tank Branch.

16 Section 6. Extensions. (1) The owner or operator of a UST system may request an
17 extension to a deadline established by this administrative regulation or established by the cabinet
18 in writing pursuant to this administrative regulation.

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

21 (3) The cabinet may grant an extension, if the cabinet determines that an extension would
22 not have a detrimental impact on human health or the environment.

1 Section 7. Incorporation by Reference. (1) The following material is incorporated by
2 reference:

3 (a) "SOTRA Application for Assistance", DEP 6067, (April 2011)~~[(August 2006)]~~; [and]

4 (b) "SOTRA Claim Request", DEP 6068, (April 2011); and

5 (c) "SOTRA Reimbursement Worksheet", DEP 0064, (April 2011)~~[(January 2006)]~~.

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

10 (b) This material is also available~~[, excluding state holidays, and may also be obtained]~~
11 on the Division of Waste Management's Web site at http://waste.ky.gov/ust~~[page located at~~
12 www.waste.ky.gov].

401 KAR 42:330 approved for filing.

7/13/11
Date


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 the eligibility requirements and rates for reimbursement from the Small Owners Tank Removal Account (SOTRA).

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to establish eligibility and rates for reimbursement from SOTRA.

(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 requirements for SOTRA.

(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 eligibility requirements and rates for reimbursement from SOTRA.

(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 ties eligibility for SOTRA reimbursement to the approval of the SOTRA Application for Assistance.

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

The amendment is necessary to tie eligibility for SOTRA reimbursement to the approval of the SOTRA Application for Assistance.

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

The amendment conforms to the content of the authorizing statute by using the appropriate reimbursement rates.

(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 specifying reimbursement rates for SOTRA.

(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. However, these may not all meet the eligibility requirements for reimbursement from SOTRA.

(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:

Regulated entities will have to fill out a SOTRA Application for Assistance, SOTRA Claim Request, and SOTRA Reimbursement worksheet using the rates established 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):

It will not increase cost to the regulated entity to fill out these forms.

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

By complying, owners may be reimbursed from the SOTRA.

(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 for implementation of this amendment.

(b) On a continuing basis:

There is no additional cost to the agency for implementation of this amendment.

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

The source of funding for implementation of this amendment is SOTRA.

(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 not be a need to increase funding 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)

Tiering is not applied for this amendment.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 401 KAR 42:330

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.

KRS 224.60-130(1)(j)

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?

This amendment will not have increased cost to the agency for implementation. There may be an increase in the amount of money paid out of SOTRA as the rates have increased.

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

This amendment will not have increased cost to the agency for implementation. There may be an increase in the amount of money paid out of SOTRA as the rates have increased.

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:

Detailed Summary of Material Incorporated by Reference

I. This administrative regulation incorporates by reference the "SOTRA Application for Assistance", DEP 6067, (April 2011). This document is to be submitted for applying for eligibility from SOTRA.

This document consists of 3 pages.

II. This administrative regulation incorporates by reference the "SOTRA Claim Request", DEP 6068, (April 2011). This document is to be filled out by eligible SOTRA applicants to get reimbursement from the SOTRA.

This document consists of 2 pages.

III. This administrative regulation incorporates by reference the "SOTRA Reimbursement Worksheet", DEP 0064, (April 2011). This document is to be filled out by eligible SOTRA applicants to get reimbursement from the SOTRA.

This document consists of 8 pages.

**STATEMENT OF CONSIDERATION RELATING TO
401 KAR 42:330
Amended After Comments**

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

I. A public hearing on 401 KAR 42:330 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 42:330.

II. The following people submitted written comments:

<u>Name and Title</u>	<u>Affiliation</u>
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, RLA	Division of Waste Management
Cassandra Jobe, Supervisor, PPA	Division of Waste Management

IV. Summary of Comments and Responses

(1) Subject Matter: Clarification of reimbursement eligibility and applicability.

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

The rates for reimbursement for SOTRA should be based on the date the SOTRA Application for Assistance was approved.

(b) Response:

The division agrees. Language has been added to Sections 4 and 5 to clarify the reimbursement applicability and eligibility.

V. Summary of Action Taken by Promulgating Agency

401 KAR 42:330: Comments were considered and the following changes are suggested:

Page 5

Section 4

Line 7

After "Permanent Closure Costs.", insert "The rates established for permanent closure costs in this section shall apply to a SOTRA Application for Assistance approved after October 6, 2011.".

Page 9

Section 5

Line 9

After "Claims.", insert "Eligible reimbursement for permanent closure costs associated with a SOTRA Application for Assistance approved prior to October 6, 2011 shall be made in accordance with the administrative regulations in effect at the time the SOTRA Application for Assistance was approved.".