



UST QUARTERLY



A Newsletter of the Kentucky Underground Storage Tank Program

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2011

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Manager's Report *Proposed UST Regulations*

**By Robert Daniell, Manager
Underground Storage Tank Branch**

Every regulatory program evolves over time, and the UST program in Kentucky is no exception. Various organizational and regulatory changes have been made since the program's inception in the late 80s. The latest amendments to the regulations in 2006 were primarily focused on improving and simplifying the PSTEAF reimbursement process, and have proven to be successful in that regard.

Over the past four years, further program improvement approaches have been discussed at great length and are now included within newly proposed amendments to the UST regulations. These proposed amendments can be broken down into three primary program elements: 1) operational compliance, 2) assessment/cleanup, and 3) reimbursement. Here is a general overview of the proposed regulatory amendments within each of these program elements.

Operational Compliance

These amendments were fundamentally driven by the passage of the Energy Policy Act of 2005. This federal legislation imposed new requirements for UST programs nationally, and is the basis for the following draft provisions.

Secondary Containment - The proposed amendments generally require that new or replaced tanks, piping and spill buckets, installed six months after the effective date of the regulations, be designed and manufactured with double-walled construction. The amendments also require liquid-tight sumps and under-dispenser containment for new or replaced systems.

Delivery Prohibition - The proposed language in 401 KAR 42:045 includes new provisions for the process of prohibiting delivery to individual tanks that are out of compliance with the requirements for spill prevention, overfill prevention, release detection, corrosion protec-



tion or if a leaking tank system component is not repaired or replaced. Delivery prohibition is invoked upon the issuance of a second Notice of Violation (NOV), if the responsible party fails to comply with the initial NOV.

Operator Training - A web-based training program is being developed that will provide site-specific training for a UST facility's UST system. The tank owner/operator is required, in 401 KAR 42:020, to designate a person or persons to be trained as the designated compliance manager for their UST facility, through completion of the online training. Completion of the training will result in the generation of a site-specific management plan for the UST facility that will supply details of the system and associated requirements for testing and inspection. Accommodations will be made to allow tank owners without Internet access to utilize equipment available at the nearest Division of Waste Management regional office for Internet access and video conferencing if direct assistance from compliance staff in Frankfort is needed to complete the training.

Assessment/Cleanup

The proposed amendments establish a more scientifically-based approach to determine final remedial goals at individual UST facilities. For many years, we have relied upon the convenience of applying generic "bright line" cleanup standards to petroleum releases at UST facilities from the initial assessment all the way

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Visit our website today at <http://waste.ky.gov/ust>.



Division for Air Quality to Oversee Air Pollution Rule for Gasoline Dispensing Facilities

The Division for Air Quality is overseeing the implementation of the new emissions standards in the EPA rule, the National Emission Standards for Hazardous Air Pollutants Subpart CCCCC. The purpose of this rule is to reduce air pollution from gasoline dispensing facilities (GDFs). Gasoline vapors from GDFs contain hazardous air pollutants which pose a health risk when inhaled. According to EPA, by installing the controls required by this rule, the amount of hazardous air pollutants released to the atmosphere will be reduced by about 5 million pounds.

The Division for Air Quality may be contacted at 502-564-3999. More information on this rule can be found on EPA's website at <http://www.epa.gov/ttn/atw/area/gdfb.pdf>.

Manager's Report *Proposed UST Regulations* (continued from Page 1)

through formal corrective action. This type of generic approach is easy to understand and enforce, but can lead to situations where residual contamination is either not cleaned up enough, or is cleaned up beyond what is necessary to protect human health and the environment.

These amendments propose a change in how the risk-based soil standards developed by the University of Kentucky are utilized in accordance with KRS 224.60-137. The classification process now establishes soil and groundwater "screening levels" for the purpose of permanent closure and site investigation assessments, as opposed to final cleanup standards that apply throughout the corrective action process. The analytical results of samples collected during permanent closure will be compared against the screening levels to determine if further assessment is warranted. Site investigations will be required to determine the extent of contamination above the applicable screening levels.

Upon completion of the site investigation, the UST facility will enter into the corrective action phase. At that point, a more in-depth evaluation of the residual contamination and site-specific conditions will take place through the development of a "conceptual site model" (CSM). The CSM will take into

account the local geology, a determination as to whether impacted groundwater constitutes a usable groundwater resource (quantity/quality), plume stability, and the fate and transport of contamination in relation to exposure pathways and usable groundwater. From this, the final goals for soil and groundwater cleanup may differ from the applicable screening levels (more stringent or less stringent as appropriate).

Reimbursement

Amendments to the regulatory provisions for PSTAEP reimbursement are intended to simplify the existing process while providing clarification regarding the process requirements.

401 KAR 42:250 has been re-drafted to consolidate various sections of the previous regulations, and to eliminate unnecessary or redundant paperwork submittal requirements.

The rates contained within the Contractor Cost Outline have been amended in some cases to reflect increased costs, and new unit rates have been added for additional tasks.

401 KAR 42:330 has been amended to reflect the statutory change in KRS 224.60-130 that eliminated the restriction on the number of tanks owned for Small Owner Tank Removal Account eligibility.

It is important that, as a program, we continue to seek improvement in our efforts to protect human health and the environment by preventing releases and effectively cleaning up releases that will inevitably occur. This draft regulatory package represents the latest effort to bring about a common sense, scientifically-based approach to fulfilling that mission.

A process of soliciting informal comments has recently been completed. The draft proposed amendments will be available on the USTB website until they are filed with the Legislative Research Commission (LRC).

We anticipate that the regulation amendments will be formally filed with LRC in mid-March of 2011. If you would like to receive a copy of the proposed regulatory amendments as filed, along with all attachments, go online and sign up with RegWatch at <https://secure.kentucky.gov/Regwatch/>.

After filing the proposed regulation amendments with LRC, there will be a formal public comment period that allows the regulated community the opportunity to provide formal comments on the proposed regulations.

Upon legislative review and approval, the new regulations could be formally in place by late 2011.

The Energy and Environment Cabinet does not discriminate on the basis of race, color, national origin, sex, age, sexual orientation, gender identity, religion, disability, ancestry or veteran's status and provides, on request, reasonable accommodations including auxiliary aids and services necessary to afford an individual with a disability an equal opportunity to participate in all services, programs and activities. To request materials in an alternative format, contact the Underground Storage Tank Branch, 200 Fair Oaks Lane, 2nd Floor, Frankfort, KY 40601 or call 502-564-5981, ext. 4024. Persons with hearing and speech impairments can contact the agency by using the Kentucky Relay Service, a toll-free telecommunication device for the deaf (TDD). For voice to TDD, call 800-648-6057. For TDD to voice, call 800-648-6056.

The following language summarizing the official Opinion and Declaratory Ruling Regarding the Practice of Geology was submitted to the USTB for publication by the Kentucky Board of Registration for Professional Geologists.

Opinion and Declaratory Ruling Regarding the Practice of Geology
Underground storage tank (UST) removal and related site investigations and corrective actions
Kentucky Board of Registration for Professional Geologists
Dec. 6, 2010

The Kentucky Board of Registration for Professional Geologists issued an Opinion and Declaratory Ruling Regarding the Practice of Geology on Dec. 6, 2010, as it relates to underground storage tank (UST) removal and related site investigations and corrective actions. The board issued the Opinion and Declaratory Ruling in order to discuss the possible unlawful practice of geology by one not registered by the board as well as the standards of a professional geologist (PG) in signing and sealing professional work.

The signature of a professional engineer or PG is required by regulation applicable to underground storage tank activities on the following USTB forms:

- Certification of the Site Assessment Report,
- Certification of the Site Check Report,
- Closure Assessment Report,
- Site Investigation Checklist,
- Certification of the Corrective Action Plan, and
- Classification Certification.

The required level of oversight by a PG to warrant their seal and signature is established under KRS 322A.030(6), Code of Professional Conduct and regulated under 201 KAR 31:060 Code of Professional Conduct, Section 3 Integrity in Professional Practice (6): "A registered geologist shall sign and seal only professional work, including, but not limited to, maps and reports for which the registrant has *direct professional knowl-*

edge, and for which the registrant intends to be responsible for its accuracy and adequacy."

Kentucky board members have discussed the role of PGs in the performance of UST closures, site investigations and corrective actions with members of geologist registration boards of other states. Kentucky board members have also reviewed the requirements of other states concerning the role of PGs in regard to UST-related work. The consensus from other states is that PGs are not required to perform UST closure work or to collect related soil samples. Rather, the technical role of the PG involves the correlation and extrapolation of subsurface conditions. PGs are not required to be on site at all times, but are responsible for UST project oversight and must sign off on reports.

The board has not been presented with a complaint that any PG in their professional capacity has placed their seal or signature on work for which they have no *direct professional knowledge*. Nor have they received a complaint that a person has been practicing geology without being registered to do so. If a complaint is filed with the board alleging any PG is acting contrary to provisions of KRS 322A, then the board will investigate.

The Opinion and Declaratory Ruling Regarding the Practice of Geology is published in its entirety on the board's website <http://bpg.ky.gov>.

AIPG Professional Development Conference

The American Institute of Professional Geologists (Kentucky Section) is presenting the following professional development conference.

An Overview of Contaminated Site Investigation and Remediation

Schedule: Tuesday, April 19, 2011, 7:45 a.m. - 5 p.m.

Location: Kentucky Geological Survey, Well Sample and Core Library, 2500 Research Park Drive, Lexington, Kentucky

Description: The conference will focus on innovative assessment and remediation technologies being used in the environmental field. Case studies include petroleum hydrocarbons and chlorinated solvents sites. Presenters include private consultants, regulatory personnel, and contractors. Attendees can earn eight personal development hours of continuing education.

Registration: Detailed information on the conference including cost, the registration form, program schedule and session descriptions can be found online at <http://ky.aipg.org/Announcements.htm>.





**Underground Storage Tank Branch
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**Important
program
information
is enclosed!**

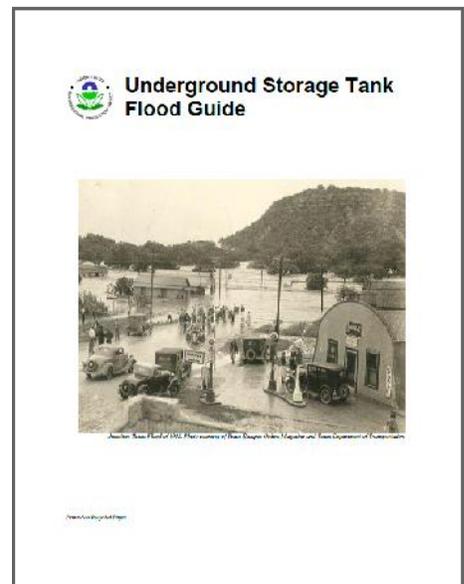
EPA's Underground Storage Tank Flood Guide Now Available

As we are all aware, heavy rains and flooding can be a problem in Kentucky. As an owner or operator of a UST facility, are you prepared? Do you know if your USTs are located in a flood area? Before a flood, what should you do? What if your tanks float? This new guide aims to help prepare for, prevent, or lessen the catastrophic effects and environmental harm that could occur as a result of flooded UST systems, as well as help return these UST systems to service as soon as possible.

The EPA designed this guide to provide simple guidelines and useful information for state, local and tribal authorities in the event of a threatened or actual flood.

The guide provides information about preparing for a flood, important actions after the disaster strikes, and information on financial assistance. It consolidates information from various federal, state, nongovernmental, and UST industry resources.

For questions or more information about the EPA flood guide, contact Erin Knighton of EPA's Office of Underground Storage Tanks at 703-603-8774 or knighton.erin@epa.gov.



The flood guide can be found on EPA's website at <http://www.epa.gov/oust/pubs/ustfloodguide.htm>.

Visit our website today at <http://waste.ky.gov/ust>.