

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (Amended After Comments)

5 401 KAR 42:005. Definitions related to 401 KAR Chapter 42.

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

8 STATUTORY AUTHORITY: KRS 224.10-100(5), 224.60-105, 42 U.S.C. 6991k, 42
9 U.S.C. 6991e,~~40 C.F.R. Part 280, Part 281, 42 U.S.C. 6991e]~~

10 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) 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(2) 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 human 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 defines terms used throughout 401 KAR Chapter 42.

20 Section 1. Definitions.

1 (1) "Aboveground release" means a~~ny~~ UST system release to the surface of the land or
2 to surface water. This includes~~[- but is not limited to,]~~ UST system releases from the
3 aboveground portion of a UST system and aboveground releases associated with overfills and
4 transfer operations as the regulated substance moves to or from a UST system.

5 (2) "Actual cost" means the cost incurred by the person performing the services or
6 supplying the products.

7 (3) "Ancillary equipment" means any devices used to distribute, meter, or control the
8 flow of regulated substances to and from a UST system, including~~[- but not limited to, piping,]~~
9 fittings, flanges, valves, and pumps.

10 (4) "Assets" is defined by KRS 224.60-120(3).

11 (5) "Automatic line leak detector" means:

12 (a) Electronic line leak detector; or

13 (b) Mechanical line leak detector.

14 (6)[(5)] "Background" means the concentration of substances consistently present in the
15 environment at, or regionally proximate to, a UST system release, but outside of the influence of
16 the UST system release. There are two (2) types of background as follows:

17 (a) Natural background is the amount of naturally-occurring substances in the
18 environment, exclusive of that from anthropogenic sources; and

19 (b) Ambient background is the amount of both naturally-occurring substances and
20 ubiquitous anthropogenic substances in the environment at levels that are representative of the
21 region surrounding the UST facility and at levels not attributable to activities on the property.

22 (7)[(6)] "Belowground release" means a~~ny~~ UST system release to the subsurface of the
23 land or to groundwater. This includes~~[- but is not limited to,]~~ UST system releases from the

1 belowground portions of a UST system and belowground releases associated with overfills and
2 transfer operations as the regulated substance moves to or from a UST system.

3 (8)[(7)] "Beneath the surface of the ground" means, for purposes of identifying an
4 underground storage tank system as set forth in KRS 224.60-100, beneath the ground surface or
5 otherwise covered with earthen materials.

6 (9)[(8)] "Bodily injury and property damage" is defined by KRS 224.60-115(1).

7 (10) "Cabinet" is defined by KRS 224.01-010(9).

8 (11)[(9)] "Cathodic protection" means a technique to prevent corrosion of a metal surface
9 by making that surface the cathode of an electrochemical cell. For example, a UST system can be
10 cathodically protected through the application of either galvanic anodes or impressed current.

11 (12)[(10)] "Cathodic protection tester" means a person accredited or certified as being a
12 cathodic protection tester in accordance with 401 KAR 42:030.~~[who can demonstrate an~~
13 ~~understanding of the principles and measurements of all common types of cathodic protection~~
14 ~~systems as applied to buried or submerged metal piping and tank systems; At a minimum, a~~
15 ~~cathodic protection tester has education and experience in soil resistivity, stray current, structure-~~
16 ~~to-soil potential, and component electrical isolation measurements of buried metal piping and~~
17 ~~tank systems.~~

18 (11) "Certified company" means a person certified pursuant to 401 KAR 42:316.

19 (12) "Certified contractor" means a person certified pursuant to 401 KAR 42:314.]

20 (13) "Change in service" means continued use of a UST system that previously stored a
21 regulated substance to store a nonregulated substance.

22 (14) "Claim" is defined by KRS 224.60-115(3).

1 (15) "Compatible" means the ability of two (2) or more substances to maintain their
2 respective physical and chemical properties upon contact with one another for the design life of
3 the UST system under conditions likely to be encountered in the UST system.

4 (16) "Connected piping" means all underground piping including valves, elbows, joints,
5 flanges, and flexible connectors attached to a UST system through which regulated substances
6 flow. For the purpose of determining how much piping is connected to any individual UST
7 system, the piping that joins two (2) UST systems shall be allocated equally between them.

8 (17) "Consumptive use" means, with respect to heating oil, consumed on the premises
9 where stored.

10 (18) "Contamination" means degradation in the quality of surface water, sediment,
11 groundwater, air, soil, or bedrock as a result of human activities.

12 (19) "Contract" means the legally-binding written agreement for performance of
13 corrective action entered into by an owner or operator and a contracting eligible company or
14 partnership eligible~~[certified]~~ pursuant to 401 KAR 42:316.

15 (20) "Corrective action":

16 (a) For purposes of 401 KAR 42:250, 42:290, 42:300, [42:314,]42:316; 42:330, 42:335
17 and 42:340, is defined in KRS 224.60-115; or

18 (b) For purposes of 401 KAR 42:011, 42:020, 42:030, 42:040, 42:045, 42:050, 42:060,
19 42:070, 42:080, 42:090, 42:095, and 42:200, means those actions necessary to protect human
20 health and the environment if there is a UST system release. Corrective action may include
21 remedial actions to clean up contaminated groundwater, surface waters or soil, actions to address
22 residual effects after initial corrective action is taken, and actions taken to restore or replace
23 potable water supplies. Corrective action may also include actions necessary to monitor, assess,

1 and evaluate a UST system release, as well as actions necessary to monitor, assess, and evaluate
2 the effectiveness of remedial action after a UST system release has occurred.

3 ~~(21) ["Corrective action agreement" means a written agreement for reimbursement~~
4 ~~between the cabinet, the owner or operator, and the certified contractor, which applies to~~
5 ~~corrective action or interim action to be performed.~~

6 ~~(22)~~ "Corrosion expert" means a person who, by reason of thorough knowledge of the
7 physical sciences and the principles of engineering and mathematics acquired by professional
8 education and related practical experience, is qualified to engage in the practice of corrosion
9 control on buried or submerged metal piping systems and metal tanks. Such a person shall be
10 accredited or certified as being qualified~~[a corrosion expert]~~ by the National Association of
11 Corrosion Engineers (NACE International), or a professional engineer licensed~~[registered]~~ by the
12 Kentucky State Board of Licensure~~[Registration]~~ for Professional Engineers and Land Surveyors
13 with certification or licensing that includes education and experience in corrosion control of
14 buried or submerged metal piping systems and metal tanks.

15 ~~(22)~~ "Delivery prohibition" means prohibiting the delivery, deposit, or acceptance of a
16 regulated substance to an underground storage tank that has been determined to be ineligible by
17 the cabinet for such delivery, deposit, or acceptance.

18 (23) "Dielectric material" means a material that does not conduct direct electrical current.

19 ~~(24)~~ "Dispenser" means a device that is used to transfer regulated substances from a UST
20 system to a point outside of the UST system.

21 ~~(25)~~~~(24)~~ "Division" is defined by KRS 224.60-115(6).

1 (26) "Domestic-use cistern" means a cistern constructed in a manner to allow the
2 infiltration of groundwater and is currently used or potentially used by humans for consumption
3 or other uses resulting in dermal or inhalation exposure.

4 (27) "Domestic-use spring" means a perennial spring continuously utilized [actively
5 accessed] by humans for consumption or other potable uses resulting in dermal or inhalation
6 exposure.

7 (28) "Domestic-use well" means a well currently used or potentially used by humans for
8 consumption or other uses resulting in dermal or inhalation exposure.

9 (29) "Double-walled piping" means piping consisting of an inner wall and an outer wall
10 with an interstitial space between the inner and outer wall.

11 (30) "Double-walled tank" means a tank consisting of an inner wall and an outer wall
12 with an interstitial space between the inner and outer wall.

13 ~~(31)[(25) "Domestic-use well, spring, cistern, or well head protection area" means a well,~~
14 ~~spring, cistern, or well head protection area currently used or potentially used by humans for~~
15 ~~personal, commercial, or agriculture purposes.~~

16 (26)] "Electrical equipment" means underground equipment containing dielectric fluid
17 used for the operation of equipment such as transformers and buried electrical cable.

18 (32) "Eligible company or partnership" means a person issued a letter of eligibility in
19 accordance with 401 KAR 42:316.

20 (33)[(27)] "Empty" means all regulated substances have been removed from the UST
21 system using commonly employed practices so that not[nø] more than two and five-tenths (2.5)
22 centimeters (one (1) inch) of residue, or three-tenths (0.3) percent by weight of the total capacity
23 of the UST system, remain in the system.

1 (34)[(28)] "Entry level" means an amount equal to the financial responsibility the owner
2 or operator shall establish and maintain in accordance with KRS 224.60-120.

3 (35)"Environmental emergency" is defined by KRS 224.01-400(1)(d).

4 (36)[(29)] "Environmentally sensitive feature" means surface waters and jurisdictional
5 wetland areas. The term shall not include road-side ditches or manmade drainage ways that do
6 not discharge to surface waters or wetland areas within a fifty (50) meter radius of the excavation
7 zone.

8 (37)[(30)] "EPA identification number" means the number assigned by the U.S. EPA or
9 the cabinet to each hazardous waste generator; transporter; and treatment, storage, or disposal
10 facility.

11 (38)[(31)] "Excavation zone" means the volume containing the UST system and backfill
12 material bounded by the ground surface, walls, and floor of the pit and trenches into which the
13 UST system is placed at the time of installation. An excavation zone may contain more than one
14 (1) UST system.

15 (39)[(32)] "Existing UST system" means a UST system used to contain an accumulation
16 of regulated substances or for which installation [~~has~~] commenced on or before December 22,
17 1988. Installation is considered to have commenced if:

18 (a) The owner or operator has obtained all federal, state, and local approvals or permits
19 necessary to begin physical construction of the UST facility or installation of the UST system;
20 and

21 (b)1. A continuous, physical construction or installation program has begun at the UST
22 facility; or

1 2. The owner or operator has entered into contractual obligations, that cannot be canceled
2 or modified without substantial loss, for physical construction at the UST facility or installation
3 of the UST system to be completed within a reasonable time.

4 (40)[(33)] "Facility" is defined by KRS 224.60-115(7).

5 (41)[(34)] "Farm tank" means a tank located on a tract of land devoted to the production
6 of crops (including nurseries) or raising animals (including fish hatcheries) and associated
7 residences and improvements.

8 (42)[(35)] "Federal agency" means any department, agency, or other instrumentality of
9 the federal government, any independent agency or establishment of the federal government,
10 including any government corporation, and the U.S. Government Printing Office.

11 (43)[(36)] "Federal regulations" is defined by KRS 224.60-115(8).

12 (44)[(37)] "Financial ability" means the capacity of a petroleum storage tank owner or
13 operator to finance the performance of corrective action.

14 (45)[(38)] "Flow-through process tank" means a tank that forms an integral part of a
15 production process through which there is a steady, variable, recurring, or intermittent flow of
16 materials during the operation of the process. Flow-through process tanks do not include tanks
17 used for the storage of materials prior to their introduction into the production process or for the
18 storage of finished products or by-products from the production process.

19 (46)[(39)] "Free product" is defined by KRS 224.60-115(9).

20 (47)[(40)] "Guarantor" is defined by KRS 224.60-120(4).

21 (48)[(41)] "Gathering lines" means pipelines, equipment, facilities, and buildings used in
22 the transportation of oil or gas during oil or gas production or gathering operations.

1 (49)[(42)] "Groundwater" means the subsurface water occurring in the zone of saturation
2 beneath the water table, and perched water zones below the B-soil horizon, including water
3 circulating through fractures, bedding planes, and solution conduits.

4 (50)[(43)] "Hazardous substance UST system" means a UST system that contains a
5 hazardous substance identified in Section 101(14) of CERCLA (but not including any substance
6 regulated as a hazardous waste under 401 KAR Chapters 31 through 39), or contains a mixture
7 of this type of hazardous substance and petroleum and is not a petroleum UST system.

8 (51)[(44)] "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy,
9 No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils
10 (including Navy Special Fuel Oil and Bunker C); and other fuels if used as substitutes for one (1)
11 of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or
12 furnaces.

13 (52)[(45)] "Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop
14 mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and
15 other similar devices.

16 (53)[(46)] "Hydrogeologically downgradient" means in the direction from a point of
17 higher hydrostatic pressure to a point of lower hydrostatic pressure, as defined by wells or
18 piezometers constructed to the same depth, or in the direction from a point where a higher water
19 table elevation exists to a point where a lower water table elevation exists, as defined by wells or
20 piezometers.

21 (54)[(47)] "Hydrogeologically upgradient" means in the direction from a point of lower
22 hydrostatic pressure to a point of higher hydrostatic pressure, as defined by wells or piezometers
23 constructed to the same depth, or in the direction from a point where a lower water table

1 elevation exists to a point where a higher water table elevation exists, as defined by wells or
2 piezometers.

3 (55) "Independent third-party evaluator" means a consulting firm, test laboratory, not-for-
4 profit research organization, or educational institution with no organizational or financial conflict
5 of interest.

6 (56) "Interior lining" means corrosion and chemical resistance materials that are applied
7 to the inside of the tank to protect the internal surface of the tank from corrosion.

8 (57) "Interstitial space" means the area between the inner and outer wall of double-walled
9 tanks or double-walled piping;

10 (58) "Liquid-tight" means impervious to the passage of water or a liquid regulated
11 substance.

12 ~~(59)[(48) "Leak-detection system" means a method of monthly monitoring capable of~~
13 ~~detecting a failure in a UST system of either the primary or secondary containment system, or~~
14 ~~capable of detecting the presence of a UST system release of a regulated substance outside the~~
15 ~~UST system.~~

16 ~~(49)] "Liquid trap" means a sump, well cellar, or other trap used in association with oil~~
17 ~~and gas production, gathering, and extraction operations (including gas production plants) for the~~
18 ~~purpose of collecting oil, water, and other liquids.~~

19 ~~(60)[(50)] "Maintenance" means the normal operational upkeep to prevent a UST system~~
20 ~~from releasing a regulated substance.~~

21 ~~(61)[(51)] "Monitoring" means the act of systematically collecting and accessing data on~~
22 ~~operational parameters or on the quality of the air, soil, bedrock, groundwater, sediment, or~~
23 ~~surface water.~~

1 (62)[(52)] "Motor fuel" is defined by KRS 224.60-115(12).

2 (63)[(53)] "Net worth" is defined by KRS 224.60-120(3).

3 (64)[(54)] "Newly discovered UST system" means a UST system at a UST facility that
4 would not have been discovered by the owner or operator by the exercise of ordinary diligence.

5 (65)[(55)] "New UST system" means a UST system that will be used to contain an
6 accumulation of regulated substances and for which installation [has] commenced after
7 December 22, 1988.

8 (66)[(56)] "Noncommercial purposes" means, with respect to motor fuel, not for resale.

9 (67)[(57)] "Occurrence" is defined by KRS 224.60-115(13).

10 (68)[(58)] "Off-site" means any area beyond the point[Point] of compliance.

11 (69) "On-site" means the area within the point of compliance.

12 (70)[(60)] "On the premises where stored" means, with respect to heating oil, UST
13 systems located on the same property where the stored heating oil is used.

14 (71)[(61)] "Operation" means the storage and dispensing of a regulated substance from a
15 UST system.

16 (72)[(62)] "Operational life" means the period beginning when installation of the UST
17 system has commenced and ending when the UST system is closed under 401 KAR 42:070.

18 (73)[(63)] "Operator" means a[any] person in control of, or having responsibility for, the
19 daily operation of the UST system.

20 (74)[(64)] "Original invoice" means an original or duplicate copy of an itemized list of all
21 products or services obtained, including the itemized cost thereof provided to the contractor or
22 owner or operator by the person supplying the products or providing the services.

1 (75)[(65)] "Overfill release" means a UST system release that occurs if a UST system is
2 filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

3 (76)[(66)] "Owner" means:

4 (a) ~~For~~[~~H~~] a UST system in use on November 8, 1984, or brought into use after that date,
5 ~~a~~[any] person who owns a UST system used for storage, use, or dispensing of a regulated
6 substance; and

7 (b) ~~For~~[~~H~~] a UST system in use before November 8, 1984, but no longer in use on that
8 date, ~~a~~[any] person who owned the UST system immediately before the discontinuation of its
9 use.

10 (77)[(67)] "Permanent closure" means either:

11 (a) Closure, occurring prior to December 22, 1988, in accordance with the
12 requirements of the Kentucky Fire Marshal, and applicable industry standards when
13 closure occurred, and in a manner that prevents future use of the UST system; or

14 (b) After December 22, 1988, removing the UST system from the ground or filling the
15 UST system with an inert solid material or a combination of both methods.

16 (78)[(68)] [~~"Permanently closed" means a UST system was:~~

17 (a) ~~Closed prior to December 22, 1988 in accordance with the requirements of the~~
18 ~~Kentucky Fire Marshal, and]~~[in accordance with] [~~applicable industry standards when closure~~
19 ~~occurred, and in a manner that prevents]~~ [any] [future use of the UST system;

20 (b) ~~Closed after December 22, 1988, but prior to April 18, 1994]~~[December 19, 1990][, in
21 accordance with 40 C.F.R. 280.71 through 280.74; or

22 (c) [~~Closed after December 19, 1990, but prior to April 18, 1994, in accordance with~~
23 ~~administrative regulations in effect at that time;~~

1 ~~(d) Closed after April 18, 1994, but prior to January 1, 1996, in accordance with the~~
2 ~~emergency administrative regulations that took effect on February 15, 1994;~~

3 ~~(e) Closed after January 1, 1996 in accordance with 401 KAR 42:070 or 401 KAR 42:071~~
4 ~~in effect at that time; or~~

5 ~~(f) [[Closed in accordance with 401 KAR 42:070 after September 1, 2011][the effective~~
6 ~~date of this administrative regulation].~~

7 ~~(79)[(69)] "Person" is defined by KRS 224.60-115(14).~~

8 ~~(80)[(70)] "Petroleum" is defined by KRS 224.60-115(15).~~

9 ~~(81)[(71)] "Petroleum storage tank" is defined by KRS 224.60-115(16)[~~224.60-~~~~
10 ~~115(16)];~~

11 ~~(82)[(72)] "Petroleum storage tank operator" is defined by KRS 224.60-115(17);~~

12 ~~(83)[(73)] "Petroleum storage tank owner" is defined by KRS 224.60-115(18).~~

13 ~~(84)[(74)] "Petroleum UST system" means a UST system that contains petroleum or a~~
14 ~~mixture of petroleum with de minimis quantities of other regulated substances. The term includes~~
15 ~~those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum~~
16 ~~solvents, and used oils.~~

17 ~~(85)[(75)] "Pipe" or "piping" means a hollow cylinder or tubular conduit that is~~
18 ~~constructed of nonearthen materials (for example, concrete, steel, plastic, or a combination of~~
19 ~~these types of materials).~~

20 ~~(86)[(76)] "Pipeline facilities" means new and existing pipe rights-of-way and any~~
21 ~~associated equipment, facilities, or buildings, including gathering lines.~~

22 ~~(87)[(77)] "Point of compliance" means the property boundaries of the property on which~~
23 ~~the UST facility is located.~~

1 (88) "Product deliverer" means a person who delivers or deposits regulated substances
2 into a UST system.

3 ~~(89)[(78)] "Prestablished fixed cost" means the cost determined by the cabinet to be~~
4 ~~reimbursed from the Petroleum Storage Tank Environmental Assurance Fund for actions taken~~
5 ~~as a result of a written directive from the cabinet or corrective action agreement.~~

6 (79) "Ranking system" means the system for determining the sequence by which written
7 directives shall be issued in order to address the completion of corrective action, and the
8 subsequent reimbursement of those eligible costs~~[extent of environmental harm and financial~~
9 ~~ability], as established by 401 KAR 42:290;~~

10 (90)[(80)] "Registration" or "register" shall have the same meaning as "notification" or
11 "notice", as used in 40 C.F.R. Part 280 Subpart B.

12 (91)[(81)] "Regulated substance" is defined by KRS 224.60-100(2)

13 (92)[(82)] "Release" is defined by KRS 224.60-115(20).

14 (93)[(83)] "Release detection" or "Leak detection" means a method of determining
15 whether:

16 (a) A release of a regulated substance has occurred from the UST system into the
17 environment; or

18 (b) A regulated substance has infiltrated the interstitial space of a UST system ~~[a method~~
19 ~~of determining whether a UST system release has occurred.]~~

20 (94)[(84)] "Repair" means to restore a UST system component that has caused a UST
21 system release of a regulated substance ~~[from a UST system]~~or that exhibits an unusual operating
22 condition.

1 (95)[(85)] "Residential tank" means a tank located on property used primarily for
2 dwelling purposes.

3 (96)[(86)] "Residual tank materials" means [any] accumulated tank water, bottom
4 sediments, mixture of product and water, or other material remaining in a tank after removal of
5 tank contents.

6 (94) ~~"Secondary containment" means a liquid-tight physical barrier designed to contain a~~
7 ~~regulated substance that leaks or otherwise escapes from the primary barrier of a UST system~~
8 ~~and incorporates an interstitial space sufficient for monitoring.~~

9 (97)[(87)] "Secretary" is defined by KRS 224.01-010(24). ~~[means the Secretary of the~~
10 ~~Environmental and Public Protection Cabinet.]~~

11 (98)[(88)] "Septic tank" means a watertight covered receptacle designed to receive or
12 process, through liquid separation or biological digestion, the sewage discharged from a building
13 sewer. The effluent from the receptacle is distributed for disposal through the soil, and settled
14 solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

15 (99) "Statistical Inventory Reconciliation (SIR)" means a leak-detection system that uses
16 computer software to conduct a statistical analysis of inventory, delivery, and dispensing data
17 collected over a period of time to determine if a UST system is leaking.

18 (100)[(89)] "Storm-water or wastewater collection system" means piping, pumps,
19 conduits, and [any] other equipment used to collect or transport the flow of surface water run-off
20 resulting from precipitation or domestic, commercial, or industrial wastewater to or from
21 retention areas or any areas where treatment is designated to occur.

22 (101) "Sump" means a subsurface area designed to provide access to underground UST
23 system equipment.

1 (102)[(90)] "Surface impoundment" means a natural topographic depression, manmade
2 excavation, or diked area formed primarily of earthen materials (although it may be lined with
3 manmade materials) that is not an injection well.

4 (103)[(91)] "Surface water" means those waters having well-defined banks and beds,
5 either constantly or intermittently flowing; lakes and impounded waters; marshes and wetlands;
6 and [any] subterranean waters flowing in well-defined channels and having a demonstrable
7 hydrologic connection to the surface. Effluent ditches and lagoons used for waste treatment that
8 are situated on property owned, leased, or under valid easement by a permitted discharger are not
9 considered to be surface waters of the Commonwealth.

10 (104) "Suspected UST System Release" means the observation of an unusual operating
11 condition or an unconfirmed UST system release.

12 (105)[(92)] "Tank" means a stationary component of a UST system, excluding the
13 connected underground piping, underground ancillary equipment, and containment system, if
14 any, [device] designed to contain an accumulation of regulated substances and constructed of
15 nonearthen materials (for example, concrete, steel, plastic, or a combination of these materials)
16 that provide structural support.

17 (106)[(93)] "Tank contents" means [any] accumulated tank water, bottom sediments, or
18 mixture of product and water that is removed from a tank at one (1) time by the same method
19 and that is accepted by a recycling facility.

20 (107)[(94)] "Temporary closure" means taking a UST system out of operation pursuant to
21 the requirements of 401 KAR 42:070.

22 (108)[(95)] "Third party" is defined by KRS 224.60-115(22).

1 (109) "Trip blank" means a sample of analyte-free media taken from the laboratory to the
2 sampling site and returned to the laboratory unopened. A trip blank is used to document
3 contamination attributable to shipping and field handling procedures per cooler per sampling
4 event.

5 (110) "Under-dispenser containment" means a liquid-tight containment system
6 underneath a dispenser.

7 (111)[(96)] "Underground area" means an underground room, such as a basement, cellar,
8 shaft or vault, providing enough space for physical inspection of the exterior of the UST system
9 situated on or above the surface of the floor.

10 (112)[(97)] "Underground utility conduits" means a[any] manmade underground conduit
11 installed for utility purposes either on or off site.

12 (113) "Underground storage tank" is defined by KRS 224.60-100(1).

13 (114)[(98)] "Upgrade" means the addition of or retrofitting of UST system components to
14 improve the ability of a UST system to prevent a UST system release. Examples of upgrades
15 include the addition of cathodic protection, improvements to the interior lining, and
16 improvements of spill and overfill controls.

17 (115)[(99)] "UST facility" or "site" means, with respect to an[any] owner or operator, all
18 UST systems which are owned or operated by an owner or operator and are located on a single
19 parcel of property or on a[any] contiguous or adjacent property.

20 (116)[(400)] "UST system", "tank system", or "underground storage tank system" means
21 an underground storage tank [(as defined in KRS 224.60-100)], connected underground piping,
22 and underground ancillary equipment, if any.

1 (117)[(401)] "UST system release" means [any] spilling, leaking, emitting, discharging,
2 .escaping, leaching, or disposing ~~of[or]~~ a regulated substance from a UST system into
3 groundwater, surface water, surface or subsurface soils~~], or interstitial space between a UST~~
4 ~~system and its secondary barrier or secondary containment].~~ The term shall not include spilling,
5 leaking, emitting, discharging, escaping, leaching, or disposing that is permitted or authorized by
6 Kentucky or federal law.

7 (118)[(402)] "UST system release detection" means method, that complies with the
8 requirements of 401 KAR 42:040, for determining whether a UST system release has occurred.

9 (119) "Unusual Operating Condition" means a condition observed during the normal
10 operation of an underground storage tank system that shall be reported to the cabinet pursuant to
11 401 KAR 42:050. Unusual operating conditions include the erratic behavior of product
12 dispensing equipment; the sudden loss of product from a portion of the UST system; the
13 unexplained presence of water in the tank exceeding one (1) inch~~two (2) inches~~; failing results
14 from a tank or line tightness test; failing results of a corrosion protection evaluation; unexplained
15 failing results from a release detection method or device; unexplained inventory discrepancies;
16 two (2) consecutive months of inconclusive statistical inventory reconciliation (SIR) results;
17 unexplained equipment failure or malfunction; unexplained presence of vapors; infiltration of
18 liquid into the interstitial space of a UST system; unexplained overfill or release detection
19 alarms; or evidence of a release of a regulated substance.

20 (120) "Vapor intrusion" means the presence of volatile and semi-volatile organic
21 compounds in residential or commercial buildings, assessed in accordance with the Release
22 Response and Initial Abatement Requirements Outline, resulting from contaminated subsurface
23 media originating from a UST system release.

1 (121)[(103)] "Wastewater treatment tank" means a tank that is designed to receive and
2 treat an influent wastewater through physical, chemical, or biological methods.

3 Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by
4 context, acronyms and abbreviations used in 401 KAR Chapter 42 shall have the meaning as
5 identified in Table 1 of this administrative regulation.

CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601 et seq.)
C.F.R.	Code of Federal Regulations
DEP	Kentucky Department for Environmental Protection
KAR	Kentucky Administrative Regulation
KRS	Kentucky Revised Statute
SARA	Superfund Amendments and Authorization Act of 1986
U.S.C.	United States Code
U.S. EPA	United States Environmental Protection Agency
SFMO	State Fire Marshal's Office
UST	Underground Storage Tank
UDC	Under-dispenser Containment
API	American Petroleum Institute
NFPA	National Fire Prevention Association
ASTM	American Society for Testing and Materials
NACE	National Association of Corrosion Engineers

STI	Steel Tank Institute
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401 KAR 42:005 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 defines the terms used in 401 KAR Chapter 42.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to define the terms used throughout 401 KAR Chapter 42.

(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 defining terms consistent with the federal regulations.

(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 defining terms that are used throughout 401 KAR Chapter 42

(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 definition of 'domestic-use spring', deletes the definition of 'permanently closed', clarifies the definition of 'permanent closure', and changes the definition of 'unusual operating conditions'.

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

This amendment is necessary to clarify terms for use in 401 KAR Chapter 42.

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

The amendment conforms to the content of the authorizing statute by being consistent with federal requirements.

(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 clarifying terms.

(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 registered UST facilities in Kentucky.

(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 no actions required. This is a regulation that defines terms used throughout 401 KAR Chapter 42.

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

There is no cost for complying with a definition regulation.

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

There is no benefit to compliance. This is a definition regulation.

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

(a) Initially:

There is no cost associated with implementing this amendment.

(b) On a continuing basis:

There is no cost associated with implementing 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 to implement this amendment is tank fees, the PSTEAF, and grants from 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:

No fee increase will 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 is a definition regulation, no fees are established or affected.

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

Tiering is applied in some of the definitions.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 401 KAR 42:005

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 224.60-105

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

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

This 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 is no cost associated with this amendment.

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

There is no cost associated with 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. 280.12

2. State compliance standards.

KRS 224.60-105

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

Definitions for 40 C.F.R. 280

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 definition for repair is broader than the federal definition. This is to allow the agency to ask owners and operators to make repairs to UST systems that exhibit unusual operating conditions.

STATEMENT OF CONSIDERATION RELATING TO
401 KAR 42:005
Amended After Comments

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

I. A public hearing on 401 KAR 42:005 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 42:005.

II. The following people submitted written comments:

<u>Name and Title</u>	<u>Affiliation</u>
William Ackland, PG	SRW Environmental Services, Inc
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: Definition of well-head protection area.

(a) Comment: William Ackland, SRW Environmental Services

Removed definitions for wellhead protection area, domestic use well, spring, and cistern. Domestic use cisterns, springs and wells were replaced by definitions 26, 27 and 28, respectively. However, wellhead protection areas are no longer included. It appears wellhead protection areas will no longer be considered as a sensitive receptor or potential groundwater resource. Was this intended?

(b) Response:

Yes. The screening levels applied to individual UST facilities adequately protect human health and the environment. Additionally, the corrective action process will take into account various criteria, including the existence of a well-head protection area, to

determine necessary remedial actions. Therefore, the division has not made a change in response to this comment.

(2) Subject Matter: Definition of permanently closed.

(a) Comment: William Ackland, SRW Environmental Services

“Permanently Closed” means a UST system was closed after 12/22/88 and before 4/18/94 or after 9/1/11. What about closures between 4/18/94 and 9/1/11? Does this mean a UST system may have undergone “permanent closure” (as per definition #77) between 4/18/94 and 9/1/11, but the UST system is not “permanently closed”?

(b) Response:

The Division agrees that the definition was imprecise. Accordingly, the Division has clarified the applicable screening levels in 42:070 and 42:080, and has removed the definition of ‘permanently closed’ in 42:005. The original definition was legacy language from previous regulations. With the updates in this regulation package, the Division no longer needs a specific definition for ‘permanently closed’, and believes that this concept is merely the past tense of ‘permanent closure’. The Division amended the definition of ‘permanent closure’ to accommodate for UST systems closed prior to December 22, 1988.

(3) Subject Matter: Definition of eligible company or partnership.

(a) Comment: William Ackland, SRW Environmental Services

“Eligible Co. or Partnership” defined as “Person” issued a letter as per 401 KAR 42:316. Should this be “Company or Partnership”?

(b) Response:

The Division disagrees. The definition of “person” is statutory and includes companies and partnerships. The eligibility requirements established in 401 KAR 42:316 further limit which entities become an eligible company or partnership.

(4) Subject Matter: Definition of domestic-use spring.

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

The definition of domestic-use spring is unclear regarding use and frequency.

(b) Response:

The Division agrees. The definition of domestic-use spring has been changed to add clarity.

V. Summary of Action Taken by Promulgating Agency

401 KAR 42:005: Comments were considered and the following changes are suggested:

Page 6

Section 1(27)

Line 4

After “means a”, insert “perennial”.

After “spring”, insert “continuously utilized”.

Delete “actively accessed”.

Page 6
Section 1(27)
Line 5

After "or other", insert "potable".

Page 12
Section 1(77)
Line 10

After "means either", insert the following:

"(a) Closure, occurring prior to December 22, 1988, in accordance with the requirements of the Kentucky Fire Marshal, and applicable industry standards when closure occurred, and in a manner that prevents future use of the UST system; or

(b) After December 22, 1988,"

Page 12
Section 1(78)
Lines 12 - 23

Delete lines 12-23 in their entirety.

Page 13
Section 1(78)
Lines 1 - 2

Delete lines 1-2 in their entirety.

Page 18
Section 1(119)
Line 13

After "tank exceeding", insert "one (1) inch".

Delete "two (2) inches".