

401 KAR 42:080. Classification of UST systems containing petroleum and listing of associated cleanup levels.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.60, Chapter 332, Chapter 322A, 40 C.F.R. Part 280 Subparts F, G, 42 U.S.C. 6991-6991c

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 224.60-137

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-105 requires the Cabinet to promulgate administrative regulations on underground storage tank (UST) systems to protect public health and the environment. The statute authorizes that the administrative regulations may distinguish between types, classes, and ages of UST systems. KRS 224.60-137 requires the cabinet to promulgate standards for corrective action for a UST system release of petroleum into the environment. This administrative regulation establishes classification and screening levels for UST systems containing petroleum.

Section 1. Scope and Applicability.

(1) (a) 1. An owner or operator of a UST system for which a Notice of Intent to Permanently Close Underground Storage Tank System containing petroleum was submitted or a confirmed UST system release of petroleum was reported to the cabinet on or after April 18, 1994, shall be required to classify the UST system in accordance with this administrative regulation.

2. The owner or operator shall, if the UST system is permanently closed or if otherwise directed by the cabinet in order to appropriately classify the UST system, submit a Classification Guide, DEP 8056, which shall be completed by a professional engineer or a professional geologist pursuant to KRS Chapters 322 and 322A.

3. The Classification Outline shall be used in completing the Classification Guide for determining the classification of a UST system.

4. The Classification Outline lists the applicable screening levels for petroleum constituents for each classification.

(b) An owner or operator of a UST system who either submitted a Notice of Intent to Permanently Close Underground Storage Tank System or reported a confirmed UST system release of petroleum to the cabinet, or took a UST system out of operation, prior to April 18, 1994, shall not be required to classify in accordance with this administrative regulation, unless:

1. After October 1, 2011, the owner or operator reports an additional confirmed UST system release of petroleum to the cabinet; and

2. The additional confirmed UST system release of petroleum is commingled with a UST system release of petroleum associated with the Notice of Intent to Permanently Close Underground Storage Tank System submitted prior to April 18, 1994, or the UST system release of petroleum reported to the cabinet prior to April 18, 1994.

(c) An owner or operator of a UST system that chooses, after October 1, 2011, to remove from the ground a UST system that was taken out of operation prior to April 18, 1994, shall not be required to classify in accordance with this administrative regulation.

(d) An owner or operator may submit, in accordance with 401 KAR 30:020, Section 2, a written request for a variance to the applicable screening levels established in accordance with this administrative regulation if:

1. Prior to October 1, 2011:

a. A Notice of Intent to Permanently Close Underground Storage Tank System containing petroleum was submitted to the cabinet; or

b. A confirmed UST system release of petroleum was reported to the cabinet; and

2. The allowable levels previously applicable to the UST facility are less stringent than the screening levels established by this administrative regulation.

(2) An owner or operator, required to classify a UST system in accordance with this administrative regulation, shall utilize the screening levels established in the Classification Outline, regardless of the date of permanent closure of the UST system.

Section 2. Extensions. (1) The owner or operator of a UST system may request an extension to a deadline established by this administrative regulation or established by the cabinet in writing pursuant to this administrative regulation.

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

(3) The cabinet shall grant an extension, if an extension would not have a detrimental impact on human health or the environment.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Classification Outline", November 2016; and

(b) "Classification Guide", DEP 8056, April 2011.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Division of Waste Management's Web site at <http://waste.ky.gov/ust>. (22 Ky.R. 331; 924; eff. 11-14-1995; 32 Ky.R. 2125; 33 Ky.R. 469; 742; eff. 9-13-2006; 37 Ky.R. 2709; 38 Ky.R. 274; 527; eff. 10-6-2011; TAm eff. 7-8-2016; TAm eff. 12-21-2016; Crt eff. 10-9-2018.)