

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

RELATES TO: KRS 224.01, 224.10, 224.60, 40 C.F.R. 280 Subpart A, 42 U.S.C. 6991c, 9601 - 9675

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.60-105, 42 U.S.C. 6991k, 6991e

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105(2) requires the cabinet to regulate underground storage tanks by requiring registration, minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other requirements to protect human health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. This administrative regulation defines terms used throughout 401 KAR Chapter 42.

Section 1. Definitions. (1) "Aboveground release" means a UST system release to the surface of the land or to surface water. This includes UST system releases from the aboveground portion of a UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from a UST system.

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

(3) "Ancillary equipment" means any devices used to distribute, meter, or control the flow of regulated substances to and from a UST system, including piping, fittings, flanges, valves, and pumps.

(4) "API" means the American Petroleum Institute.

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

(6) "Automatic line leak detector" means:

(a) Electronic line leak detector; or

(b) Mechanical line leak detector.

(7) "ASTM" means the American Society for Testing and Materials.

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

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

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

(9) "Belowground release" means a UST system release to the subsurface of the land or to groundwater. This includes UST system releases from the belowground portions of a UST system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from a UST system.

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

(11) "Bodily injury and property damage" is defined by KRS 224.60-115(1).

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

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

(14) "Cathodic protection tester" means a person accredited or certified as being a cathodic protection tester in accordance with 401 KAR 42:030.

(15) "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 - 9675.

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

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

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

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

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

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

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

(23) "Corrective action":

(a) For purposes of 401 KAR 42:250, 42:290, 42:300, 42:316; 42:330, 42:335 and 42:340, is defined by KRS 224.60-115(4); or

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

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

(25) "Delivery prohibition" means prohibiting the delivery, deposit, or acceptance of a regulated substance to an underground storage tank that has been determined to be ineligible by the cabinet in accordance with 401 KAR 42:045 for such delivery, deposit, or acceptance.

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

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

(28) "Division" is defined by KRS 224.60-115(6).

(29) "Domestic-use cistern" means a cistern constructed in a manner to allow the infiltration of groundwater and is currently used or potentially used by humans for consumption or other uses

resulting in dermal or inhalation exposure.

(30) "Domestic-use spring" means a perennial spring continuously utilized by humans for consumption or other potable uses resulting in dermal or inhalation exposure.

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

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

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

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

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

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

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

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

(39) "Environmentally sensitive feature" means surface waters and jurisdictional wetland areas. The term does not include road-side ditches or manmade drainage ways that do not discharge to surface waters or wetland areas within a fifty (50) meter radius of the excavation zone.

(40) "EPA identification number" means the number assigned by the U.S. EPA or the cabinet to each hazardous waste generator; transporter; and treatment, storage, or disposal facility.

(41) "Excavation zone" means the volume containing the UST system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation. An excavation zone contains one (1) or more than one (1) UST system.

(42) "Existing UST system" means a UST system used to contain an accumulation of regulated substances or for which installation commenced on or before December 22, 1988. Installation is considered to have commenced if:

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

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

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

(43) "Facility" is defined by KRS 224.60-115(7).

(44) "Farm tank" means a tank located on a tract of land devoted to the production of crops (including nurseries) or raising animals (including fish hatcheries) and associated residences and improvements.

(45) "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government, including any government corporation, or the U.S. Government Printing Office.

(46) "Federal regulations" is defined by KRS 224.60-115(8).

(47) "Financial ability" means the capacity of a petroleum storage tank owner or operator to finance the performance of corrective action.

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

(49) "Free product" is defined by KRS 224.60-115(9).

(50) "Guarantor" is defined by KRS 224.60-120(4).

(51) "Gathering lines" means pipelines, equipment, facilities, and buildings used in the transportation of oil or gas during oil or gas production or gathering operations.

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

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

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

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

(56) "Hydrogeologically downgradient" means in the direction from a point of higher hydrostatic pressure to a point of lower hydrostatic pressure, as defined by wells or piezometers constructed to the same depth, or in the direction from a point where a higher water table elevation exists to a point where a lower water table elevation exists, as defined by wells or piezometers.

(57) "Hydrogeologically upgradient" means in the direction from a point of lower hydrostatic pressure to a point of higher hydrostatic pressure, as defined by wells or piezometers constructed to the same depth, or in the direction from a point where a lower water table elevation exists to a point where a higher water table elevation exists, as defined by wells or piezometers.

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

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

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

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

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

(63) "Maintenance" means the normal operational upkeep to prevent a UST system from releasing a regulated substance.

(64) "Monitoring" means the act of systematically collecting and accessing data on operational parameters or on the quality of the air, soil, bedrock, groundwater, sediment, or surface water.

(65) "Motor fuel" is defined by KRS 224.60-115(12).

(66) "NACE" means the National Association of Corrosion Engineers.

(67) "Net worth" is defined by KRS 224.60-120(3).

(68) "Newly discovered UST system" means a UST system at a UST facility that would not have been discovered by the owner or operator by the exercise of ordinary diligence.

(69) "New UST system" means a UST system that will be used to contain an accumulation of regulated substances and for which installation commenced after December 22, 1988.

(70) "NFPA" means the National Fire Prevention Association.

(71) "Noncommercial purposes" means, with respect to motor fuel, not for resale.

(72) "Occurrence" is defined by KRS 224.60-115(13).

(73) "Off-site" means any area beyond the point of compliance.

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

(75) "On the premises where stored" means, with respect to heating oil, a UST system located on the same property where the stored heating oil is used.

(76) "Operation" means the storage and dispensing of a regulated substance from a UST system.

(77) "Operational life" means the period beginning when installation of the UST system has commenced and ending when the UST system is closed under 401 KAR 42:070.

(78) "Operator" means a person in final control of, or having final responsibility for, the daily operation of the UST system. The operator shall be a person who has full authority to comply with the requirements of 401 KAR Chapter 42.

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

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

(81) "Owner" means:

(a) For a UST system in use on November 8, 1984, or brought into use after that date, a person who owns a UST system used for storage, use, or dispensing of a regulated substance; and

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

(82) "Permanent closure" means either:

(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, removing the UST system from the ground or filling the UST system with an inert solid material or a combination of both methods.

(83) "Person" is defined by KRS 224.60-115(14).

(84) "Petroleum" is defined by KRS 224.60-115(15).

(85) "Petroleum storage tank" is defined by KRS 224.60-115(16);

(86) "Petroleum storage tank operator" is defined by KRS 224.60-115(17);

(87) "Petroleum storage tank owner" is defined by KRS 224.60-115(18).

(88) "Petroleum UST system" means a UST system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. The term includes those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

(89) "Pipe" or "piping" means a hollow cylinder or tubular conduit that is constructed of non-earthen materials (for example, concrete, steel, plastic, or a combination of these types of materials).

(90) "Pipeline facilities" means new or existing pipe rights-of-way and any associated equipment, facilities, or buildings, including gathering lines.

(91) "Point of compliance" means the property boundaries of the property on which the UST fa-

cility is located.

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

(93) "Ranking system" means the system for determining the sequence by which written directives shall be issued in order to address the completion of corrective action, and the subsequent reimbursement of those eligible costs, as established by 401 KAR 42:290.

(94) "Registration" or "register" shall have the same meaning as "notification" or "notice", as used in 40 C.F.R. Part 280 Subpart B.

(95) "Regulated substance" is defined by KRS 224.60-100(2).

(96) "Release" is defined by KRS 224.60-115(20).

(97) "Release detection" or "leak detection" means a method of determining if:

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

(b) A regulated substance has infiltrated the interstitial space of a UST system.

(98) "Repair" means to restore a UST system component that has caused a UST system release of a regulated substance or that exhibits an unusual operating condition.

(99) "Residential tank" means a tank located on property used primarily for dwelling purposes.

(100) "Residual tank materials" means accumulated tank water, bottom sediments, mixture of product and water, or other material remaining in a tank after removal of tank contents.

(101) "SARA" means the Superfund Amendments and Authorization Act of 1986.

(102) "Secretary" is defined by KRS 224.01-010(24).

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

(104) "SFMO" means the State Fire Marshal's Office.

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

(106) "STI" means the Steel Tank Institute.

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

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

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

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

(111) "Suspected UST system release" means the observation of an unusual operating condition or an unconfirmed UST system release.

(112) "Tank" means a stationary component of a UST system, excluding the connected underground piping, underground ancillary equipment, and containment system, if any, designed to con-

tain an accumulation of regulated substances and constructed of nonearthen materials (for example, concrete, steel, plastic, or a combination of these materials) that provide structural support.

(113) "Tank contents" means accumulated tank water, bottom sediments, or mixture of product and water that is removed from a tank at one (1) time by the same method and that is accepted by a recycling facility.

(114) "Temporary closure" means taking a UST system out of operation pursuant to the requirements of 401 KAR 42:070.

(115) "Third party" is defined by KRS 224.60-115(22).

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

(117) "Under-dispenser containment" or "UDC" means a liquid-tight containment system underneath a dispenser.

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

(119) "Underground utility conduit" means a manmade underground conduit installed for utility purposes either on or off site.

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

(121) "Upgrade" means the addition of or retrofitting of UST system components to improve the ability of a UST system to prevent a UST system release. Examples of upgrades include the addition of cathodic protection, improvements to the interior lining, and improvements of spill and overfill controls.

(122) "UST facility" or "site" means, with respect to an owner or operator, all UST systems which are owned or operated by an owner or operator and are located on a single parcel of property or on a contiguous or adjacent property.

(123) "UST system", "tank system", or "underground storage tank system" means an underground storage tank, connected underground piping, and underground ancillary equipment, if any.

(124) "UST system release" means spilling, leaking, emitting, discharging, escaping, leaching, or disposing of a regulated substance from a UST system into groundwater, surface water, surface or subsurface soils. The term does not include spilling, leaking, emitting, discharging, escaping, leaching, or disposing that is permitted or authorized by Kentucky or federal law.

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

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

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

(128) "Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods. (22 Ky.R. 427; 918; eff. 11-14-1995; 23 Ky.R. 986; eff. 3-12-1997; 29 Ky.R. 2146; 2458; eff. 4-11-2003; 32 Ky.R. 2109; 33 Ky.R. 456; 732; eff. 9-13-2006; 37 Ky.R. 2686; 38 Ky.R. 255; 510; eff. 10-6-2011; Crt eff. 10-9-2018.)