

401 KAR 42:045. Delivery prohibition.

RELATES TO: KRS 224.10, 224.60, 40 C.F.R. Part 280 Subpart C, 42 U.S.C. 6991c

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 224.60-150, 42 U.S.C. 6991e, 6991k

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-105 requires the cabinet to establish a program for regulating underground storage tanks that implements the federal regulatory requirements for underground storage tanks. 42 U.S.C. 6991k authorizes the parameters for delivery prohibition for underground storage tank systems. This administrative regulation establishes the procedures for invoking delivery prohibition for an underground storage tank system.

Section 1. Applicability. This administrative regulation shall not apply to a regulated underground storage tank used to fuel an emergency backup generator.

Section 2. Delivery Prohibition for UST Systems. (1) The cabinet shall determine that a UST system is ineligible for delivery, deposit, or acceptance of regulated substances upon confirmation of one (1) or more of the following conditions:

(a) In accordance with 401 KAR 42:020, 42:030, and 42:040, required spill prevention equipment is not installed, operational, or maintained;

(b) In accordance with 401 KAR 42:020, 42:030, and 42:040, required overfill prevention equipment is not installed, operational, or maintained;

(c) In accordance with 401 KAR 42:020 and 42:030, required corrosion protection equipment is not installed, operational, or maintained;

(d) In accordance with 401 KAR 42:040, required release detection is not performed;

(e) In accordance with 401 KAR 42:020 and 42:040, required release detection equipment is not installed, operational, or maintained;

(f) In accordance with 401 KAR 42:020, required registration is not submitted or is not amended as necessary;

(g) In accordance with 401 KAR 42:200, the annual fee for underground storage tanks is past due by more than one (1) year; or

(h) A defective UST system component, confirmed by UST system testing or visual observation by the cabinet, and for which the owner or operator has not documented a repair or replacement, has:

1. Caused a release of a regulated substance into the environment; or

2. Allowed a regulated substance to infiltrate into the interstitial space of the UST system.

(2) If a condition established in subsection (1)(a) through (h) of this section exists, the cabinet shall issue a Notice of Violation to the UST system's owner or operator.

(3) The Notice of Violation shall serve as notice to the owner or operator of the cabinet's intent to invoke delivery prohibition for the UST system if the violation is not corrected within the time frame established in writing by the cabinet.

(4) Upon failure by the owner or operator to correct the violation of a condition established in subsection (1)(a) through (h) of this section, cited in the initial Notice of Violation, or to request an extension, in accordance with Section 3 of this administrative regulation, a second Notice of Violation shall be issued.

(5) Upon issuance by the cabinet of the second Notice of Violation, delivery prohibition shall be invoked and an authorized representative of the cabinet shall attach a delivery prohibition tag to the non-compliant UST system.

(6) An owner or operator shall ensure that a delivery prohibition tag shall not be removed,

defaced, altered, or destroyed.

(7) An owner or operator shall not allow the delivery, deposit, or acceptance of regulated substances into a UST system for which the cabinet has invoked delivery prohibition, unless otherwise directed in writing by the cabinet for the purpose of UST system testing.

(8) An owner or operator shall notify the appropriate product deliverer if delivery prohibition has been invoked.

(9) Delivery prohibition shall remain in effect until the non-compliant UST system is returned to compliance for the violation that caused delivery prohibition to be invoked.

(10) The cabinet shall determine if a UST system is authorized to accept deliveries within two (2) business days (Monday through Friday) of receipt of written notice from the owner or operator that the remedial measures established in the Notice of Violation have been met.

(11) If the violation has been corrected, the cabinet shall terminate delivery prohibition and remove an affixed delivery prohibition tag within two (2) business days (Monday through Friday).

(12) If the division director or designee determines, in writing, that delivery prohibition at a UST facility would jeopardize the availability of, or access to, motor fuel in a rural and remote area, the cabinet shall defer the application of delivery prohibition for a UST system, with reference to subsection (1)(a) through (h) of this section, for a period not to exceed forty-five (45) days.

Section 3. 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. The extension request shall be in writing pursuant to this administrative regulation.

(2) The cabinet shall grant an extension, if an extension would not have a detrimental impact on human health or the environment. (37 Ky.R. 2773; 38 Ky.R. 522; eff. 10-6-2011; 422 Ky.R. 1610; eff. 2-5-2016; Crt eff. 10-9-2018.)