

401 KAR 42:090. Financial responsibility.

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

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 224.60-120

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 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 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 standards to protect public 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 establishes requirements for demonstrating financial responsibility for corrective action and for compensation of third parties for bodily injury and property damage caused by sudden or nonsudden accidental UST system releases arising from the operation of UST systems containing petroleum.

Section 1. Applicability. Applicability shall be as established in 40 C.F.R. 280.90.

Section 2. Compliance Dates. Compliance dates shall be as established in 40 C.F.R. 280.91.

Section 3. Amount and Scope of Required Financial Responsibility. Amount and scope of required financial responsibility shall be as established in 40 C.F.R. 280.93.

Section 4. Allowable Mechanisms and Combinations of Mechanisms. Allowable mechanisms and combinations of mechanisms shall be as established in 40 C.F.R. 280.94.

Section 5. Financial Test of Self-insurance. Requirements for a financial test of self-insurance shall be as established in 40 C.F.R. 280.95.

Section 6. Guarantee. Requirements for a guarantee shall be as established in 40 C.F.R. 280.96.

Section 7. Insurance and Risk Retention Group Coverage. Insurance and risk retention group coverage shall be as established in 40 C.F.R. 280.97.

Section 8. Surety Bond. Requirements for a surety bond shall be as established in 40 C.F.R. 280.98.

Section 9. Letter of Credit. Requirements for a letter of credit shall be as established in 40 C.F.R. 280.99.

Section 10. Use of State-required Mechanism. Use of a state-required mechanism shall be as established in 40 C.F.R. 280.100.

Section 11. State Fund or Other State Assurance. (1) Requirements for the state fund or other state assurance shall be as established in 40 C.F.R. 280.101.

(2) The Petroleum Storage Tank Environmental Assurance Fund (PSTEAF) may be utilized as a mechanism to demonstrate financial responsibility in accordance with subsection (1) of

this section. The requirements for PSTEAF shall be as established in 401 KAR 42:250.

Section 12. Trust Fund. Requirements for a trust fund shall be as established in 40 C.F.R. 280.102.

Section 13. Standby Trust Fund. Requirements for a standby trust fund shall be as established in 40 C.F.R. 280.103.

Section 14. Local Government Bond Rating Test. Requirements for a local government bond rating test shall be as established in 40 C.F.R. 280.104.

Section 15. Local Government Financial Test. Requirements for a local government financial test shall be as established in 40 C.F.R. 280.105.

Section 16. Local Government Guarantee. Requirements for a local government guarantee shall be as established in 40 C.F.R. 280.106.

Section 17. Local Government Fund. Requirements for a local government fund shall be as established in 40 C.F.R. 280.107.

Section 18. Substitution of Financial Assurance Mechanisms by Owner or Operator. Substitution of financial assurance mechanisms by owner or operator shall be as established in 40 C.F.R. 280.108.

Section 19. Cancellation or Nonrenewal by a Provider of Financial Assurance. Cancellation or nonrenewal by a provider of financial assurance shall be as established in 40 C.F.R. 280.109.

Section 20. Reporting by Owner or Operator. Reporting by owner or operator shall be as established in 40 C.F.R. 280.110.

Section 21. Recordkeeping. Recordkeeping shall be as established in 40 C.F.R. 280.111.

Section 22. Drawing on Financial Assurance Mechanisms. Drawing on financial assurance mechanisms shall be as established in 40 C.F.R. 280.112.

Section 23. Release from the Requirements. Release from the requirements shall be as established in 40 C.F.R. 280.113.

Section 24. Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance. Bankruptcy or other incapacity of owner or operator or provider of financial assurance shall be as established in 40 C.F.R. 280.114.

Section 25. Replenishment of Guarantees, Letters of Credit, or Surety Bonds. Replenishment of guarantees, letters of credit, or surety bonds shall be as established in 40 C.F.R. 280.115.

Section 26. Suspension of Enforcement. Suspension of enforcement shall be as established in 40 C.F.R. 280.116.

Section 27. Certification of Financial Responsibility. An owner or operator shall certify, through signature on the UST Facility Registration Form, DEP 7112, incorporated by reference in 401 KAR 42:020, that financial responsibility has been established and shall be maintained in accordance with this administrative regulation.

Section 28. 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. (17 Ky.R. 1646; eff. 12-19-1990; 22 Ky.R. 335; eff. 11-14-1995; 32 Ky.R. 2127; 33 Ky.R. 743; eff. 9-13-2006; 37 Ky.R. 2711; 38 Ky.R. 528; eff. 10-6-2011; Crt eff. 10-9-2018.)