

401 KAR 42:340. Laboratory certification.

RELATES TO: KRS 224.60-110, 224.60-130, 224.60-140

STATUTORY AUTHORITY: KRS 224.60-130(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)(a) requires the establishment of criteria to certify laboratories that contract with owners or operators of petroleum storage tanks to perform analytical testing and that owners and operators have all required analytical testing performed by a certified laboratory to be eligible for Petroleum Storage Tank Environmental Assurance Fund (PSTEAF) reimbursement. This administrative regulation establishes the requirements for certification and the parameters and methods on which certification shall be granted.

Section 1. Applicability. (1) Owners and operators seeking reimbursement from the PSTEAF for analytical testing shall utilize a laboratory certified pursuant to this administrative regulation.

(2) This administrative regulation shall apply to analytical testing performed on or after October 1, 1999.

(3) An owner or operator of a petroleum storage tank who fails to comply with this requirement shall not be reimbursed by the cabinet for costs related to analytical testing.

Section 2. Certification Requirements. (1) A laboratory shall demonstrate current accreditation by:

(a) The American Association for Laboratory Accreditation; or

(b) A state approved to accredit environmental laboratories, in accordance with National Environmental Laboratory Accreditation Program requirements and standards.

(2) A laboratory seeking certification from the cabinet shall submit a completed Application for Laboratory Certification, DEP 6074.

(a) The application shall include proof of accreditation as described in subsection (1) of this section; and

(b) The applicant shall retain a copy of the form for his or her own records.

(3) The cabinet shall reimburse a petroleum storage tank owner or operator for the cost of a laboratory analysis if the:

(a) Analysis is conducted in accordance with the established parameters and methods;

(b) Analysis is required by written directive by the cabinet and performed in accordance with 401 KAR Chapter 42; and

(c) Laboratory is certified by the cabinet to conduct that analysis.

Section 3. Maintaining Laboratory Certification. (1) A certified laboratory shall maintain accreditation by the American Association for Laboratory Accreditation or the National Environmental Laboratory Accreditation Program for the duration of certification.

(2) If a certified laboratory's accreditation, in accordance with Section 1 of this administrative regulation, is renewed, or otherwise changes in status, the certified laboratory shall submit updated documentation of the accreditation status to the cabinet within thirty (30) days.

(3)(a) A laboratory holding valid certification from the USTB issued prior to October 1, 2011 shall not be required to submit a new Application for Laboratory Certification, DEP 6074.

(b) In order to maintain certification status, the certified laboratory shall comply with subsection (2) of this section.

(4) If a certified laboratory fails to maintain certification in accordance with this section, the laboratory shall be required to submit an Application for Laboratory Certification, DEP 6074, in accordance with Section 2 of this administrative regulation.

Section 4. Loss of Certification. (1) The cabinet shall revoke a certification if the applicant:

(a) Obtains the certification through fraud or misrepresentation; or

(b) Knowingly or intentionally submits materially false information to owners, operators, contractors, or the cabinet.

(2) The cabinet shall, within ten (10) days of a revocation determination, notify the laboratory, in writing, of the revocation of certification.

(3) A laboratory seeking to dispute revocation may appeal that decision pursuant to KRS 224.10-420, 224.10-440, 401 KAR 42:320, and 100:010.

Section 5. 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 the cabinet determines that an extension would not have a detrimental impact on human health or the environment.

Section 6. Incorporation by Reference. (1) "Application for Laboratory Certification", DEP 6074, November 2016 is incorporated by reference.

(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>. (25 Ky.R. 2052; 2871; eff. 6-9-1999; 29 Ky.R. 551; 944; eff. 10-9-2002; Recodified from 415 KAR 1:140; 32 Ky.R. 2145; 33 Ky.R. 759; eff. 9-13-2006; 37 Ky.R. 2739; 38 Ky.R. 549; eff. 10-6-2011; TAm eff. 7-8-2016; TAm eff. 12-21-2016; Crt eff. 10-9-2018.)