

401 KAR 42:316. Petroleum Storage Tank Environmental Assurance Fund eligibility criteria for contracting companies and partnerships.

RELATES TO: KRS 224.10-420, 224.10-440, 224.60-130, 224.60-140, 322, 322A

STATUTORY AUTHORITY: KRS 224.60-130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1) requires the cabinet to establish by administrative regulation the procedures to administer the financial responsibility and petroleum storage tank accounts of the Petroleum Storage Tank Environmental Assurance Fund, and authorizes establishment of eligibility criteria for companies and partnerships that engage in corrective action. This administrative regulation establishes eligibility criteria for companies or partnerships that contract with eligible owners and operators seeking reimbursement for the performance of corrective action at petroleum storage tank facilities.

Section 1. Eligibility Requirements. (1) To be eligible to contract with a petroleum storage tank owner or operator seeking reimbursement from the cabinet, a company or partnership shall:

(a) Employ or contract with a Professional Engineer (P.E.) licensed with the Kentucky Board of Licensure for Professional Engineers and Land Surveyors, in accordance with KRS 322, or a Professional Geologist (P.G.) registered with the Kentucky Board of Registration for Professional Geologists, in accordance with KRS Chapter 322A;

(b) Hold, in good standing, all licenses, permits, and training certifications required to perform corrective action services in Kentucky;

(c) Maintain, at a minimum, general and professional liability insurance and pollution or property coverage in the amount of \$1,000,000; and

(d) Be approved in writing by the cabinet as eligible to contract with a petroleum storage tank owner or operator seeking reimbursement from the cabinet to perform corrective action services.

(2)(a) By January 1, 2012, a company or partnership holding an existing contract with a petroleum storage tank owner or operator seeking reimbursement shall comply with subsection (1) of this section and shall submit the PSTEAF Eligible Company or Partnership Application, DEP 6073.

(b) The applicant shall retain a copy of the application for their records.

(3) An authorized representative of an eligible company shall sign an application or claim payment request in addition to the eligible owner or operator. The eligible company shall certify that:

(a) The information or payment request has been reviewed and is true and correct; and

(b) Each claim payment cost is reasonable, necessary, and was performed in compliance with 401 KAR Chapter 42.

Section 2. Application Requirements. (1) An applicant for company or partnership eligibility shall submit:

(a) A completed PSTEAF Eligible Company or Partnership Application, DEP 6073;

(b) Verification of the employment or contracting of a Professional Engineer (P.E.) licensed with the Kentucky Board of Licensure for Professional Engineers and Land Surveyors, in accordance with KRS Chapter 322, or a Professional Geologist (P.G.) registered with the Kentucky Board of Registration for Professional Geologists, in accordance with KRS Chapter 322A; and

(c) A list of the names and address of officers and principals of the applicant.

(2) Cabinet staff shall inspect the records and business premises of the applicant if necessary to verify information in the application or to assist in the evaluation of the applicant's capabilities.

(3) The cabinet shall require additional information and documentation if necessary to verify information in the application.

(4) An application for eligible company or partnership status shall be denied if the applicant:

(a) Fails to provide the information required in the application or in this administrative regulation;

(b) Does not meet the requirements of subsection (1) of this section;

(c) Fails to allow cabinet staff to access company records for audit purposes pursuant to 401 KAR 42:335;

(d) Fails to provide additional information and documentation requested by the cabinet to verify that the requirements of this administrative regulation have been met;

(e) Provides false or misleading information in the application; or

(f) Fails to maintain general and professional liability insurance and pollution or property coverage.

(5) An applicant whose application for company or partnership eligibility is denied may appeal the determination by requesting a reconsideration or hearing pursuant to KRS 224.10-420, 224.10-440, and 401 KAR 100:010.

(6) The cabinet shall issue a letter of eligibility to a qualifying applicant.

Section 3. Amended Applications. (1) An eligible company or partnership shall submit an amended application if information in the PSTEAF Eligible Company or Partnership Application has changed.

(2) The cabinet may request an updated application upon the receipt of information indicating a change to application information.

Section 4. Eligibility and Renewal Procedures. (1) The cabinet shall issue a letter of eligibility to each company that successfully complies with this administrative regulation.

(2) Eligibility shall be renewed two (2) years from the date of the letter of eligibility. The company or partnership shall be responsible for renewing eligibility prior to expiration.

(3) An application for eligibility renewal shall be submitted to the cabinet on the PSTEAF Eligible Company or Partnership Application, DEP 6073.

(4) Corrective action costs incurred, after the expiration date, shall be ineligible for reimbursement upon the failure of the company or partnership, under contract with an owner or operator, to renew eligibility.

Section 5. Revocation of Eligibility. (1) A letter of eligibility issued pursuant to this administrative regulation shall be revoked if:

(a) The eligible company or partnership or its employee or agent knowingly submits materially false information or documentation, or a false payment request to an owner, operator, or the cabinet;

(b) The eligible company or partnership or a current officer, director, or principal of that company, has been convicted of an environmental crime;

(c) The eligible company or partnership has failed to comply with the terms set forth in 401 KAR 42:335; or

(d) The eligible company or partnership obtained eligibility through fraud or misrepresentation.

(2) The cabinet shall issue a letter by certified mail notifying a noncompliant company or partnership that its eligibility has been revoked by action of the cabinet.

(3) A person whose eligibility is revoked may appeal the determination by requesting a hearing pursuant to KRS 224.10-420, 224.10-440, 401 KAR 42:320, and 401 KAR 100:010.

Section 6. Incorporation by Reference. (1) "PSTEAF Eligible Company or Partnership Application," DEP 6073, 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. 1272; 1925; 2558; eff. 5-19-1999; Recodified from 415 KAR 1:116, 2-17-2005; 32 Ky.R. 2139; 33 Ky.R. 480; 755; eff. 9-13-2006; 37 Ky.R. 2731; 38 Ky.R. 544; eff. 10-6-2011; TAm eff. 7-8-2016; TAm eff. 12-21-2016; Crt eff. 10-9-2018.)