

401 KAR 42:011. Scope of Underground Storage Tank Program.

RELATES TO: KRS 224.10, 224.60, 40 C.F.R. Part 280 Subpart A, 42 U.S.C. 6991c, Pub. L. 83-703

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105

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 requirements 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 the scope of the cabinet's Underground Storage Tank Program, including provisions for exclusions and deferrals.

Section 1. Applicability, Exclusions and Deferrals. (1) The requirements of 401 KAR Chapter 42 shall apply to all owners and operators of UST systems, except as provided in subsections (3) and (4) of this section.

(2) A UST system used for dual purposes, at least one (1) of which is regulated, shall meet the requirements of 401 KAR Chapter 42.

(3) Exclusions. The following shall be excluded from the requirements of 401 KAR Chapter 42:

- (a) UST systems containing wastes identified as hazardous in 401 KAR Chapter 31 and UST systems containing mixtures of hazardous waste and other regulated substances;
- (b) Wastewater treatment tank systems;
- (c) Equipment and machinery containing regulated substances for operational purposes, such as hydraulic lift tanks and electrical equipment tanks;
- (d) UST systems having a capacity of 110 gallons or less;
- (e) UST systems containing a de minimis concentration of regulated substances;
- (f) Emergency spill or overflow containment UST systems that are emptied immediately after use;
- (g) Exclusions listed in KRS 224.60-100(1)(a) through (i);
- (h) UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954, as amended, Pub. L. 83-703;
- (i) UST systems that are part of an emergency generator system at a nuclear power generation facility regulated by the Nuclear Regulatory Commission as established in 10 C.F.R. Part 50, Appendix A;
- (j) Airport hydrant fuel distribution systems; and
- (k) UST systems with field-constructed tanks.

(4) Deferrals. With the exception of UST systems installed after April 1, 2012, 401 KAR 42:040 shall not apply to UST systems that store fuel solely for use by emergency power generators. (17 Ky.R. 1635; eff. 12-19-1990; 315; eff. 11-14-1995; 32 Ky.R. 2113; 33 Ky.R. 460; 735; eff. 9-13-2006; 37 Ky.R. 2691; 38 Ky.R. 514; eff. 10-6-2011; Crt eff. 10-9-2018.)