

## **401 KAR 42:330. Small Owners Tank Removal Account.**

RELATES TO: KRS 224.60-105, 224.60-130(1)(a), (b), (j), 224.60-140, 224.60-150, 40 C.F.R. 280 Part H

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)(j) requires the establishment of an account to reimburse small owners for the reasonable cost of permanent closure, and authorizes the cabinet to promulgate administrative regulations to establish this account. This administrative regulation establishes the eligibility requirements and rates for reimbursement from the Small Owners Tank Removal Account (SOTRA).

Section 1. Eligibility. (1) To demonstrate eligibility, an owner shall submit a completed SOTRA Application for Assistance, DEP 6067. An owner shall be eligible for reimbursement from this account if:

(a) The petroleum storage tank owner meets the financial eligibility criteria of \$100,000 total income averaged over the last five (5) years as documented by the applicant's signed federal income tax returns for the last five (5) years, with the exception of Non-Profit Public Service Corporations, eligible governmental bodies and all other Non-Profit entities, which shall provide tax exemption documentation and budgets for the last five (5) years;

(b) The tanks are located on a facility that is or was involved in the retail sale or wholesale distribution of motor fuel;

(c) The tanks are registered with the Division of Waste Management by the applicant seeking reimbursement from the Small Owners Tank Removal Account (SOTRA), pursuant to KRS 224.60-105 and 401 KAR 42:020;

(d) The owner certifies that:

1. The retail sale or wholesale distribution of motor fuel at the facility from a UST system or systems permanently cease upon permanent closure of the tanks; and

2. All known tanks at the facility are being removed or closed in place; and

(e) The owner has owned the tanks for more than one (1) year prior to the date of the application for reimbursement from this account.

(2) A newly discovered underground storage tank system shall not affect the eligibility of an owner otherwise eligible in accordance with subsection (1) of this section.

(3) A tank shall not need to be in operation prior to its removal.

(4) A written notice shall be submitted to the applicable regional office at least fourteen (14) calendar days prior to commencement of the permanent closure of the petroleum storage tank to maintain eligibility for reimbursement.

(5) Federal and state-owned facilities shall not be eligible for reimbursement from the Small Owners Tank Removal Account.

Section 2. Account Use. (1) Funds in this account shall be used to reimburse eligible petroleum storage tank owners for those reasonable and necessary costs incurred through performance of actions required in 401 KAR 42:070.

(2) The use of this account shall be limited as specified in KRS 224.60-130(1)(j).

(3)(a) The owner of a facility shall be eligible for reimbursement of the cost of permanent closure, but shall not be eligible for payment of corrective action cost from this account.

(b) If corrective action is required, eligible reimbursement shall be governed by 401 KAR 42:250.

(4)(a) If expenditures from this account exceed \$3,000,000 during any fiscal year, the cabinet shall suspend further reimbursements from this account. The suspension shall be in effect until

the cabinet determines that further reimbursements from this account will not threaten the solvency of the Petroleum Storage Tank Environmental Assurance Fund.

(b) This determination shall be based upon legislatively enacted budgets and associated appropriations.

Section 3. Application Procedure. (1) The owner shall file a completed SOTRA Application for Assistance, DEP 6067 for participation in this account at least forty-five (45) days prior to the permanent closure of the petroleum storage tank. The owner shall also provide the following information:

(a) Verification of income through the submittal of copies of the applicant's signed federal income tax returns for the last five (5) years, with the exception of Non-Profit Public Service Corporations, eligible governmental bodies and all other Non-Profit entities, which shall provide tax exemption documentation and budgets for the last five (5) years;

(b) A copy of the contract between the owner and the primary contractor;

(c) A facility map identifying approximate property boundaries, placement of petroleum storage tank pits, location of other relevant facility features including buildings, canopies, driveways, piping, dispenser islands, paved areas, and the proposed extent of areas to be evacuated in the performance of permanent closure, including dimensions;

(d) Color photographs of the facility and the areas to be impacted by the permanent closure; and

(e) A copy of a deed or other documentation indicating ownership of the tanks, if the tanks have not been registered in the applicant's name, in accordance with 401 KAR 42:020, with the Division of Waste Management for twelve (12) months prior to the SOTRA application being submitted.

(2) The owner shall retain a copy of the SOTRA Application for their records.

(3)(a) In response to the application submitted, the cabinet shall issue a letter setting forth the owner's eligibility status and the availability of funding for the closure of the petroleum storage tank.

(b) Permanent closure of the tank system shall not begin until the cabinet has approved the application and established the reimbursable amount. Failure to comply with this requirement shall result in denial of the reimbursement.

Section 4. Permanent Closure Costs. The rates established for permanent closure costs in this section shall apply to a SOTRA Application for Assistance approved after October 6, 2011. (1)(a) Reimbursement from this account shall be determined from the lesser of two (2) dollars and sixty (60) cents per gallon of tank capacity or the following matrix table:

Number of Tanks in Pit	Size of Largest Tank in Pit (gallons)			
	Less than 3,100	3,101 to 5,100	5,101 to 10,000	Greater than 10,000
1	\$3,900	\$4,420	\$6,370	\$7,020
2	\$6,370	\$7,150	\$9,620	\$11,180
3	\$8,320	\$9,750	\$12,610	\$15,340
4	\$10,270	\$11,700	\$15,340	\$18,200
5	\$12,220	\$13,650	\$17,940	\$21,970
Each Extra	\$1,950	\$1,950	\$2,340	\$2,860

(b) In addition to the cost listed in subsection (1)(a) of this section, the cabinet shall reimburse a one (1) time amount of \$2,095, for the preparation and submission of a Closure Assessment Re-

port, incorporated by reference in 401 KAR 42:070.

1. This shall include the cost of preparing a classification guide.

2. The cabinet shall also reimburse a one (1) time amount of \$500 for the mobilization and demobilization of equipment.

(c) If more than one (1) tank pit is located on a facility, the reimbursement shall be calculated by adding the matrix table cost for each pit, in addition to the costs allowed in subsection (3) of this section.

(2) The following items shall be included in the cost listed in subsection (1)(a) of this section:

(a) Tank system removal, cleaning, and disposal or closure-in-place requirements;

(b) Permanent closure of thirty-five (35) feet of associated piping outside of the tank pit;

(c) Removal of the pump island and canopy;

(d) Drumming of cleaning material;

(e) Backfilling to return the excavation to grade less the reimbursable volume of contaminated backfill disposed or treated at a permitted facility and replaced in accordance with subsection (3) of this section;

(f) Concrete or asphalt surface removal;

(g) Equipment and material necessary for the permanent closure;

(h) Preparation of a permit if required for permanent closure or testing of a tank system;

(i) Excavation and loading of material;

(j) Collection of samples, including domestic-use wells, domestic-use springs, and domestic-use cisterns within a 100-meter radius of the UST system; and

(k) Labor charges relating to paragraphs (a) through (j) of this subsection.

(3) The costs of the following items shall be allowed, if necessary, in addition to the cost established in subsection (1)(a) of this section upon the submittal of a claim in accordance with Section 5 of this administrative regulation:

(a) Facility restoration. Facility restoration activities shall only be reimbursable under this account if a No Further Action Letter has been issued for the subject facility upon completion of permanent closure activities in accordance with 401 KAR 42:070, without corrective action activities being performed outside of the excavation zone. A cost estimate shall be submitted, through the completion of Section 12 of the SOTRA Reimbursement Worksheet, DEP 0064, and shall be approved by the Underground Storage Tank Branch, in writing, prior to incurring costs. Additional costs related to the repair of subsidence resulting from improper placement of fill material shall not be reimbursable;

(b) Transportation, disposal, or treatment, and replacement of backfill contaminated above the applicable screening levels established in 401 KAR 42:080;

(c) Disposal of asphalt surface material;

(d) Installation of up to four (4) soil borings in accordance with Section 4.4 of the Closure Outline, incorporated by reference in 401 KAR 42:070;

(e) Transportation and disposal, treatment, or recycling of tank contents or waste;

(f) Removal, transportation, and disposal or treatment of water from within the excavation zone in accordance with Section 4.1 of the Closure Outline, contaminated above the applicable screening levels established in 401 KAR 42:080;

(g) Laboratory analysis, as required in accordance with the Closure Outline, incorporated by reference in 401 KAR 42:070, with the exception of laboratory analysis of samples collected in accordance with Section 6 of the Closure Outline; and

(h) Grain size analysis for facilities accurately classified as Class B in accordance with the Classification Outline, incorporated by reference in 401 KAR 42:080.

(4) Optional soil removal outside of the excavation zone in accordance with Section 6 of the Closure Outline, incorporated by reference in 401 KAR 42:070 shall be reimbursed in accordance

with 401 KAR 42:250.

(5) Facility restoration for corrective action activities performed outside of the excavation zone shall be reimbursed in accordance with 401 KAR 42:250.

Section 5. Claims. Eligible reimbursement for permanent closure costs associated with a SOTRA Application for Assistance approved prior to October 6, 2011 shall be made in accordance with the administrative regulations in effect at the time the SOTRA Application for Assistance was approved. (1)(a) To receive reimbursement, an owner shall submit a completed SOTRA Claim Request, DEP 6068; and

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

(2)(a) In addition to the completed claim form, the owner shall submit the required SOTRA Reimbursement Worksheet, DEP 0064.

(b) Documentation of actual cost, including invoices and weigh tickets, shall be attached to the worksheet.

(3) The cabinet shall review a claim request for the following:

(a) The number and size of tanks removed; and

(b) Verification of eligible costs.

(4) To receive reimbursement, an owner shall have paid all annual tank fees as required by KRS 224.60-150.

(5) The cabinet may request additional supporting documentation to verify the reasonableness or necessity of a cost.

(6) If a claim is determined to be deficient by the Underground Storage Tank Branch, a written deficiency letter, outlining the deficiencies, shall be issued to the applicant. Failure by the applicant to provide the requested information and documentation within thirty (30) days of receipt of the request shall cause the claim to be denied.

(7) Reimbursement shall be contingent upon a determination by the cabinet that the report required is complete and meets the requirements of 401 KAR Chapter 42.

(8)(a) An entry level shall not be assessed for eligible reimbursement in accordance with this administrative regulation.

(b) An entry level shall be assessed upon confirmation of a release, constituting an occurrence, that requires corrective action for which the applicant is seeking reimbursement through the Financial Responsibility Account or Petroleum Storage Tank Account in accordance with 401 KAR 42:250.

(9) All claims shall be submitted within two (2) years after issuance of a No Further Action letter by the Underground Storage Tank Branch.

Section 6. 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 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "SOTRA Application for Assistance", DEP 6067, November 2016;

(b) "SOTRA Claim Request", DEP 6068, November 2016; and

(c) "SOTRA Reimbursement Worksheet", DEP 0064, August 2011.

(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>. (23 Ky.R. 3649; 4178; 24 Ky.R. 77; eff. 7-9-1997; 25 Ky.R. 1128; 2868; eff. 6-9-1999; Recodified from 415 KAR 1:130; 32 Ky.R. 2141; 33 Ky.R. 483; eff. 9-13-2006; 37 Ky.R. 2735; 38 Ky.R. 287; 546; 746; eff. 10-6-2011; TAm eff. 7-8-2016; TAm eff. 12-21-2016; Crt eff. 10-9-2018.)