



UST QUARTERLY



A Newsletter of the Kentucky Underground Storage Tank Program

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Energy and Environment Cabinet
Leonard K. Peters, Secretary

Department for Environmental Protection
R. Bruce Scott, Commissioner

Division of Waste Management
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Underground Storage Tank Branch
Edward J. Winner, Manager

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For more information, comments or story suggestions, please contact Virginia Lewis, editor of the UST Quarterly.
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502-564-5981, ext. 4024

To report a release or suspected release, call the Environmental Response Branch.
1-800-928-2380

Manager's Report—HB 465

By Edward J. Winner, Kentucky Underground Storage Tank Branch Manager

In April 2012, Governor Steve Beshear signed into law House Bill (HB) 465. The bill made an addition to section 1 of KRS 224.60-135 and section 1 of KRS 224.60-138 and helps to clarify liability provisions regarding underground storage tank (UST) sites. There are two aspects of the bill to which I would like to call your attention.

First, HB 465 provides that a property owner, who is not also the petroleum storage tank owner or operator, is not obligated to clean up contamination from a UST release. As a result, persons interested in redeveloping former UST properties can potentially acquire those properties without accepting the liability for cleaning up past releases from regulated USTs.

Second, if the petroleum storage tank owner has received a "no further action" (NFA) letter from the UST Branch for a release, that property will not be subject to any additional actions under other state laws

that are related to the release of contaminants into the environment.

Specifically, if the tank owner/operator receives an NFA letter from the UST Branch, the law indicates that those facilities will not be subject to future regulation under KRS 224.01-400 or KRS 224.01-405 for those petroleum releases from regulated USTs.

It is hoped that this clarification of liability will encourage both perspective purchasers and lending institutions to move ahead with the redevelopment of sites at which historic releases of petroleum from regulated USTs has occurred.

For more information on HB 465, contact Edward Winner at 502-564-5981, ext. 4782 or Edward.Winner@ky.gov.



Three Important Upcoming Fund Deadlines

The Petroleum Storage Tank Environmental Assurance Fund (PSTEAF or the fund) was created to assist owners and operators of Kentucky petroleum USTs in 1) meeting the federal financial responsibility requirement and by 2) providing reimbursement of eligible corrective action costs due to releases from petroleum UST systems.

The PSTEAF has three subaccounts used for UST Branch purposes. These are the Financial Responsibility Account (FRA), the Petroleum Storage Tank Account (PSTA) and the Small Owners Tank Removal Account (SOTRA).

If you rely or think you may need to rely on these accounts in any way, there are three important deadlines in the Kentucky Revised Statutes that you need to know.

Continued on Page 3—PLEASE SEE FOR IMPORTANT UPCOMING FUND DEADLINES.



Visit our website today at <http://waste.ky.gov/ust>.

Considering Cisterns, Springs and Wells in Cleanup

By Dawn Langford Baase

Correct classification of a UST facility is extremely important to establish soil and groundwater screening levels and their potential impacts to human health, safety, and the environment.

What are domestic-use (DU) sources?

Domestic-use cistern: cistern constructed in a manner to allow the infiltration of groundwater and is currently used or potentially used by humans for consumption or other uses resulting in dermal or inhalation exposure.

Domestic-use spring: perennial spring continuously utilized by humans for consumption or other potable uses resulting in dermal or inhalation exposure.

Domestic-use well: well currently used or potentially used by humans for consumption or other uses resulting in dermal or inhalation exposure.

When a UST facility begins the cleanup process, site-specific details are collected through a process called “classification.” Classification determines the soil and groundwater screening levels (for contaminants) that are used to determine if further site assessment is needed.

Screening levels within the UST facility property boundary are determined by the distance to domestic-use (DU) sources—DU cisterns, DU springs and DU wells—from the excavation zone. To be more protective, more stringent screening levels are applied within the property boundary if DU sources are located within 100 meters of the excavation zone. Less stringent soil and groundwater screening levels are applied within the property boundary if no DU sources are located within a 100-meter radius from the excavation zone and public water services the area. In every case, more stringent soil and groundwater screening levels are applied beyond the property boundary.

The classification process allows professionals working on the project to disregard DU sources if it is demonstrated that a release would not impact them. The DU source may be hydrogeologically upgradient or be built in such a manner to prevent groundwater infiltration. DU sources that are not being used cannot be disregarded based on non-use alone. Professional judgment must be used. For instance, if a DU cistern is located, but appears to be deteriorated and caving in on itself, it may likely be inappropriate to include it in the classification.

If site conditions change, additional information is discovered, or if a release from the UST system is documented to have no potential impact on DU sources, classification can potentially be amended. The professionals working on the UST site should submit recommendations regarding classification to the UST Branch for consideration.

For definitions of “Excavation zone,” “Hydrogeologically upgradient,” or other terms in this article, refer to the Kentucky Administrative Regulations (401 KAR 42:005).

Process for Contesting a Decision

On occasion an underground storage tank (UST) owner or operator may wish to contest certain decisions of the Energy and Environment Cabinet. The process for doing so is set forth in statute and regulation. The statutory authority for the filing of a petition is provided in [Kentucky Revised Statute \(KRS\) 224.10-420\(2\)](#) (see right).

It should be noted that not all cabinet decisions are subject to appeal. The statute explicitly limits this right to orders or final determinations and also limits the time in which the order or determination may be contested. As always, a party should seek legal counsel in order to determine if a certain decision is an order or final determination subject to appeal and if the filing of a petition for hearing is appropriate in their circumstances.

The proper procedure for filing a petition for hearing with the cabinet is to file the petition with the cabinet’s Office of Administrative Hearings (“OAH”), at 35-36 Fountain Place, Frankfort, Ky. 40601. The UST Branch has historically forwarded petitions for hearing to OAH, but a party will see a faster result if they properly file the petition with OAH directly as set out in the regulation.

Once the petition is filed, OAH will issue an administrative summons and set a date for a prehearing conference. The parties will receive documents in the mail that set out the process going forward.

Kentucky Revised Statute 224.10-420(2):

“Any person not previously heard in connection with the issuance of any order or the making of any final determination arising under this chapter by which he considers himself aggrieved may file with the cabinet a petition alleging that the order or final determination is contrary to law or fact and is injurious to him, alleging the grounds and reasons therefore, and demand a hearing. An order or final determination includes, but is not limited to, the issuance, denial, modification, or revocation of a permit, but does not include the issuance of a letter identifying deficiencies in an application for a permit, a registration or a certification, or other nonfinal determinations. This subsection does not abrogate the right to a hearing on a draft permit afforded by [KRS 224.40-310](#). Unless the cabinet considers that the petition is frivolous, it shall serve written notice of the petition on each person named therein and shall schedule a hearing before the cabinet not less than twenty-one (21) days after the date of such notice, except as provided in [KRS 224.10-410](#) or unless the person complained against waives in writing the twenty-one (21) day period. The right to demand a hearing pursuant to this section shall be limited to a period of thirty (30) days after the petitioner has had actual notice of the order or final determination complained of, or could reasonably have had such notice.”

Three Important Upcoming Fund Deadlines *(Continued from Page 1)*

July 15, 2013—Registration—KRS 224.60-142(2)

The owner of any petroleum storage tank containing motor fuels currently existing, or removed from the ground after January 1, 1974, shall register the petroleum storage tank containing motor fuels with the cabinet prior to applying to the fund, and shall register the petroleum storage tank containing motor fuels **by July 15, 2013**. Owners or operators may submit affidavits and applications relevant to current petroleum storage tank accounts **through July 15, 2013**.

July 15, 2013—SOTRA—KRS 224.60-145(8)

... the small operator assistance account and small operator tank removal account established under KRS 224.60-130 shall continue in effect **until July 15, 2013**, and thereafter until all eligible claims related to tanks registered by that date are resolved, and sufficient money shall be allocated to and maintained in that account to assure prompt payment of all eligible claims, and to provide for removal of tanks for eligible owners and operators as directed by this chapter.

July 15, 2016—PSTA—KRS 224.60-130(1)(e)

... Reimbursements of corrective action projects performed under the petroleum storage tank account shall be carried out **on or before July 15, 2016**. Any corrective action costs incurred after this date shall not be eligible for reimbursement under the petroleum storage tank account ...

These are excerpts from the Kentucky Revised Statutes. **For more information on the upcoming fund deadlines, contact Edward Winner at Edward.Winner@ky.gov or 502-564-5981, ext. 4782.**

Planning Around State Holidays

We are providing this information on upcoming state holidays to help you better plan working with us. More information on state holidays can be found at <http://personnel.ky.gov/stemp/holiday.htm>.

Upcoming State Holidays

- Dec. 24-25, 2012**—Christmas
- Dec. 31, 2012-Jan. 1, 2013**—New Year's
- Jan. 21, 2013**—Martin Luther King, Jr.'s Birthday
- One-half day, March 29, 2013**—Good Friday
- May 27, 2013**—Memorial Day
- July 4, 2013**—Independence Day
- Sept. 2, 2013**—Labor Day
- Nov. 11, 2013**—Veterans Day
- Nov. 28-29, 2013**—Thanksgiving



Online Services

They're quick!

Use online services and make UST-related business with the Commonwealth quicker, easier and greener.

Submit Documents

Operational Compliance Site Assessment Remediation

Claims and Payments

Make Payments

Pay Annual Tank Fees

Complete Training

(Coming Soon)

Kentucky UST Operator Training (KY TOOLS)

To get started, go to the UST Branch website at <http://waste.ky.gov/ust> and just follow the links.

Bright ideas?

Tell us what you think.

Let us know if there is something you would like to see in the UST Quarterly.

Send your ideas, suggestions and photos to Virginia Lewis.

Virginia.Lewis@ky.gov

502-564-5981, ext. 4024





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Frankfort, KY 40601



UST Program
Information
Enclosed



Happy holidays from the Kentucky Underground Storage Tank Branch.

Internal Lining Requirement Deadline

There are presently 425 Kentucky USTs for which internal lining is being used as the only method of corrosion protection. **By Dec. 22, 2013**, these tanks must have a manned entry integrity assessment and impressed current cathodic protection added or the tank(s) must be permanently closed.

For more information on this requirement, contact Denise Dzurenka at Denise.Dzurenka@ky.gov or 502-564-5981, ext. 4607.



The lining (green) is peeling off the inside of this UST and the tank walls are rusting.

Kentucky Operator Training Update

Kentucky TOOLS (Tank Operator Online Learning System) is tentatively slated to be released to the public **in early March 2013**.

Revised deadlines will be established for Designated Compliance Manager (DCM) designation and completion of Kentucky UST operator training. The revised deadlines will be officially communicated to UST owners and operators by mail and will be posted on the UST Branch website.

Per federal law, states are to ensure that UST operators are trained according to state-specific training requirements.

For updates and more information on Kentucky UST operator training, go to the UST Branch website or contact Leslie Carr at Leslie.Carr@ky.gov or 502-564-5981, ext. 4778.



Visit our website today at <http://waste.ky.gov/ust>.