



UST QUARTERLY



A Newsletter of the Kentucky Underground Storage Tank Program

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The Carrot or the Stick?

By Edward Winner, UST Branch Manager

I suppose that this is the “carrot and stick” issue of the UST quarterly. On pages two and three, we have two rather long, thorough articles containing much useful information.

The first article is the “carrot”. Jill Stoltz, the Claims and Payments Section Supervisor, outlines the Small Owners Tank Removal Account. This program helps pay for the removal of USTs when one elects to exit the retail fuel business. It is representative of the efforts the UST Branch makes to help owners and operators successfully manage their UST systems.

The second article is written by Justin Schul, the Enforcement Branch Manager. This is the “stick”, so to speak. Despite common sense and reasonable efforts on the part of the UST Branch staff and the state’s field inspectors, there are those owners and operators who do not maintain their UST systems. I know it is difficult and at times expensive to keep one’s UST system in top shape. As long as the pumps

dispense fuel and the customers keep coming, it seems reasonable to assume everything is ok. But even small leaks from the system add up to large fuel releases over time and ultimately cost the taxpayers of Kentucky millions of dollars.

We’re here to help you, and we provide those carrots which law and regulations allow. But we also need you to help us so that together we can prevent contamination of the state’s natural resources, allowing all of us to share clean water, air, and soil. Maintaining secure underground storage tanks and their accompanying equipment and avoiding fines and other penalties is more than just a “stick”; it is the responsibility of every UST owner and operator.

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



UST Facility Change in Ownership

By Lola Lyle, Supervisor, Administrative Section

Did you recently sell a UST facility and are you still receiving communications from our office regarding tanks you no longer own? Simply send in documentation, such as a copy of the new deed, showing that you sold the tanks and the tanks will be taken out of your name and placed in the new owner’s name. The new owner will still be responsible for submitting a new UST Facility Registration Form DEP7112, but you will no longer be listed as the tank owner in our database. It is the responsibility of the new owner to submit the new UST Facility Registration Form DEP7112 to us within 30 days of the UST system ownership change. The new owner’s signature is required on this form. Remember, UST Facility Registration Form DEP7112 can be submitted online at <http://waste.ky.gov/UST/Pages/ElectronicSubmittals.aspx>.



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For more information, comments or story suggestions, please contact Kathleen Riggs, editor. Kathleen.riggs@ky.gov 502.564.5981, ext. 4798

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



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

SOTRA: Small Owners Tank Removal Account

By Jill Stoltz, Supervisor, Claims and Payments Section



The purpose of SOTRA, as defined by the statutory authority KRS 224.60-130 (1) (j), is “to reimburse the reasonable cost of tank system removal for small owners and operators”. With this purpose, two questions come to mind: what is meant by “reasonable cost” and who are “small owners and operators”? Let’s start with small owners and operators to determine eligibility before discussing cost.

The regulation does not specifically define small owners and operators but outlines five eligibility requirements in 401 KAR 42:330 under Section 1 (1). If you are eligible for SOTRA, then you are a small owner or operator. Here are the requirements and some details you may find helpful:

1. The tank owner does not make more than \$100,000 per year, as documented by the last five years of federal income taxes. When applying for SOTRA, the last five years of the owner’s signed federal tax returns are to be submitted along with the SOTRA application form (DEP 6067). Claims and Payments staff reviews the returns by averaging the total income listed on each tax return. Simply put, we look at line 11 on Form 1120 and at line 22 on Form 1040.

- **If**, for some legitimate reason, the most recent tax returns are unavailable, submit the last five years that are obtainable.
- **If** necessary, contact the IRS to obtain a transcript of past years’ tax returns. Kentucky Revenue also retains seven years of the most recent state tax returns. We would accept state tax returns if all other sources of returns have been exhausted, as this return documents federal income as well.

The only exception to this requirement is **Non-Profit Public Service Corporations, eligible governmental bodies and all other Non-Profit entities**. If the tank owner is a Non-Profit entity, *tax exempt documentation and budgets for the last five years* along with the SOTRA application form (DEP 6067) are required.

2. The tanks are located on a UST facility that is or was involved in the retail sale or wholesale distribution of motor fuel.


3. The tank owner (applicant) who is applying for SOTRA has registered the tanks with the USTB using the UST Facility Registration Form (DEP 7112). Be sure the Petroleum Storage Tank Owner (Applicant’s) Name on the SOTRA application form and the UST Facility Owner Name on the Registration form are the same. We will check! The tanks must be registered prior to submitting the SOTRA application.

4. The tank owner must certify that 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 all known tanks at the facility are being removed or closed in place.

5. The tank owner has owned the tanks for more than one year prior to the date of submitting the SOTRA application. If you just purchased the tanks, please wait for one year before applying for SOTRA. We do not accept applications that need to be held until the one-year date.

Now that you understand who is eligible for SOTRA reimbursement, let’s move on to the reasonable costs of removing a tank system. Section 4 of 401 KAR 42:330 details the expected cost of permanent closure. The reimbursement is determined from **the lesser of \$2.60 per gallon of tank capacity or the matrix table included in section 4**. The table lists costs based on the number of tanks and the size of the largest tank in the pit. **The lump sum reimbursement covers all closure activities as listed in section 2**, from *removal of the pump island to labor charges*, as shown in the table, or by the \$2.60 per gallon calculation.

A one-time reimbursement of \$2,095 is allotted for the Closure Assessment Report (Section 1(b)) and equipment mobilization. “*If necessary*” costs are listed under section 3. Activities such as Facility Restoration, Replacement of Backfill above screening levels, Disposal of Surface material, etc., fall in the “*if necessary*” category. If a situation arises in which a cost is not covered by the lump sum allotment, then it may be a reimbursable. For example, if the backfill was found to be above screening levels, the transportation, disposal or treatment, and replacement of backfill is reimbursable. Section 4 addresses Optional Soil Removal, which shall be reimbursed based on the submission of analysis above screening levels. Finally, Facility Restoration is also covered by SOTRA, outlined in section 5. If a SOTRA site receives a No Further Action (NFA) in the closure phase, Facility Restoration will be reimbursed under the SOTRA account. However, if the site moves into Corrective Action, then the Facility Restoration will be reimbursed under the FRA or PSTA account.

In summary, if you meet the five eligibility requirements, then USTB will reimburse the removal of your tank system. The reimbursement is based on the size and number of tanks being removed. Other costs are covered under SOTRA but only if necessary. SOTRA may seem complicated but it is available to help you. Please call 502.564.5981 if you need assistance. 

Avoiding Enforcement Action

By Justin Schul, Division of Enforcement Branch Manager

Most underground storage tank (UST) owners and operators do an outstanding job maintaining operational compliance but, each year, there are a few that find themselves facing thousands of dollars in fines through enforcement action due to non-compliance with the requirements of UST regulations.

The goal of the Division of Enforcement (DENF) is to deter future non-compliance. One of the most effective deterrents is the assessment of fines and civil penalties. Under the authority of KRS 224.99-010, the Cabinet has the power to assess penalties in the amount of five thousand dollars per day and per violation, until the violation is corrected. For example, if a UST facility has seven (7) tank systems and is not performing release detection, annual line tightness, or line leak detector tests for any of the systems, the Cabinet would consider this to be three (3) separate violations per tank system, totaling twenty-one (21) violations in all. In this example, the UST facility owner or operator could be assessed a substantial civil penalty for non-compliance. One factor in the determination of penalty assessment is the evaluation of economic benefit the responsible party gains by not spending money on routine maintenance and testing. This is a basic fairness argument, taking into consideration that the majority of underground storage tank owners incur substantial costs conducting required testing year after year in order to comply with Cabinet rules and regulations.

Ultimately, the reason the Cabinet requires owner/operators to keep their tanks in compliance is to ensure that their tanks are not leaking. Leaking tanks can negatively impact more than just the tank owner. Leaks can migrate off-site onto adjacent properties and contaminate groundwater. If an owner/operator is determined to be non-compliant and is required to perform remedial testing that confirms a leaking tank system, additional penalties are often assessed. When comparing the relatively lower overall costs of compliance testing and monitoring versus large penalties and fines, maintaining compliance is much more cost effective for tank owners and protective of the environment.

Most first time violators are able to resolve their violations by paying an average of around eight thousand dollars (owners with 3-4 tank systems). In addition to the penalty, the responsible party is also out-of-pocket for the expense of the routine testing they failed to conduct to begin with. Repeat offenders for the same types of violations are subject to increased fines and penalties. In the end, it makes good economic sense to avoid a costly enforcement action by investing resources in the daily maintenance and operation required by regulation.



*Avoid fines and other penalties by staying in compliance. The **Facility Management Plan** that is generated when you complete TOOLS training is a helpful resource for maintaining compliance. In the **Facility Management Plan**, owners and operators find detailed information about the equipment registered at their UST facilities and schedules for required testing of that equipment. If you have any questions about the information in your **Facility Management Plan**, call 502-564-5981 and select Option #2 to speak with someone in the Compliance Section.*

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**UST Program
Information
Enclosed**

Reminders: Kentucky Tank Operator Online Learning System (KY TOOLS)

By Stephen Kent, UST Branch Compliance Section Supervisor

Owners of temporarily closed UST facilities must name a primary Designated Compliance Manager (DCM)

A primary DCM must be designated even if your UST facility is temporarily closed. Many aspects of tank compliance require routine testing and maintenance during these closure periods. One of the most critical routine tests involves cathodic protection. Tanks and piping systems that have cathodic protection systems are required to have these systems tested every 36 months, regardless of active or temporary closure status.

It's time for annual re-training for some DCMs

DCM recertification is required on an annual basis. The TOOLS website requires the use of the username and password created during the first round of training. If you do not remember, or did not save this information, please contact the UST Compliance Section for assistance.

Some KY T.O.O.L.S. lessons are optional

KY TOOLS includes up to 16 site-specific lessons that must be completed by the DCM for each UST facility. The primary DCM is only required to take the lessons that pertain to equipment and testing methods used at your UST facility. Lessons listed as "optional" toward the bottom of the list of lessons in TOOLS are not required but are recommended to help you develop a better understanding of the requirements for operating underground storage tanks.

If you have any questions or would like assistance with online training, please contact the UST Compliance Section at 502-564-5981, option #2.



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