

#### **401 KAR 101:030. Tiered response system.**

RELATES TO: KRS 224.01-410, EO 2008-507, 2008-531

STATUTORY AUTHORITY: KRS 224.01-410(3), (6), EO 2008-507, 2008-531

NECESSITY, FUNCTION AND CONFORMITY: KRS 224.01-410(3) and (6) requires the cabinet to establish administrative regulations for the cleanup of methamphetamine contaminated properties. EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation establishes the assessment of contaminated properties and the tiered response system.

Section 1. Applicability. This administrative regulation shall apply to methamphetamine contaminated properties discovered by Kentucky State Police or local law enforcement on or after July 15, 2008.

Section 2. Assessment of an Inhabitable Property. (1) The cabinet shall provide the Kentucky State Police and local law enforcement with the initial site assessment form, Clandestine Drug Lab Preliminary Assessment Tier Selection Criteria (TAS), DEP 1016, April 2018.

(a) Based on the results of the Tier Selection Criteria portion of the form, if the property is determined to be a contaminated property, law enforcement shall assign a tier for cleanup response, pursuant to KRS 224.01-410(5).

(b) Once the form has been completed, it shall be sent to the cabinet, where it shall be available for review as an open record.

(2) Law enforcement shall consult with the cabinet prior to making a Tier 4 recommendation.

(3) A certified contractor may determine that an alternate tier for cleanup response is more appropriate, based on assessments and testing of the property.

(a) If during the cleanup process, the contractor discovers evidence that would alter the tier assignment for the contaminated property, the contractor shall do the following:

1. Halt all cleanup activities;

2. Contact the cabinet within three (3) business days to request a variance from the initial tier assignment; and

3. Provide a written justification for the variance request, including results of assessments completed, sample results, photographs, and all other evidence and documentation supporting the variance request.

(b) Once all supporting documentation has been provided to the cabinet, there shall be a review and decision made by the cabinet to determine if the variance request has been granted.

(c) Once the review is complete and the decision is made, all cleanup activities shall resume in accordance with the decision regarding the tier.

Section 3. Classification as a Tier 1. A tier 1 shall include the following:

(1) Crime scene investigation shows that the methamphetamine manufacturing or cooking process was initiated;

(2) (b) Limited amounts of reagents or precursors for methamphetamine manufacturing are present and open;

(3) (c) It is uncertain whether a 'cook' was completed;

(4) (d) The investigation by the police finds:

(a) One (1) or two (2) anhydrous ammonia "Nazi" 'cooks' were completed; and

(b) Less than two (2) ounces of methamphetamine was produced per production event;

- (5) The investigation shows methamphetamine production lasted less than three (3) days; or
- (6) Minor spills and staining are observed on surfaces near the suspected cooking location.

Section 4. Classification as a Tier 2. A tier 2 shall include the following:

- (1) Crime scene investigation finds that methamphetamine, reagents, or precursors were produced;
- (2) Police investigation finds:
  - (a) One (1) or two (2) red phosphorus (Red-P); or
  - (b) 1. Three (3) to four (4) "Nazi" method 'cooks' may have been completed; and
  - 2. Less than two (2) ounces of methamphetamine was produced per production event;
- (3) The police investigation shows methamphetamine production lasted longer than three (3) days, but less than two (2) weeks; or
- (4) Spills and staining are observed in multiple areas of the structure.

Section 5. Classification as a Tier 3. A tier 3 shall include the following:

- (1) Investigation of the crime scene shows that numerous Red-P or "Nazi" 'cooks', or precursors and reagent production have occurred;
- (2) The investigation suggests each cook that was completed could yield more than two (2) ounces but less than one (1) pound of methamphetamine per production event;
- (3) The investigation suggests methamphetamine production was conducted over a period of two (2) weeks to several months;
- (4) Moderate to severe spills and staining are observed in the cooking areas and throughout the structure;
- (5) Investigation shows releases outside the structure observed including:
  - (a) Burn pits;
  - (b) Open dumps; and
  - (c) Outside cooking areas;
- (6) A property where the method for methamphetamine production was determined to be the P2P/Methylamine method;
- (7) A property with re-occurring 'cooks'; or
- (8) A property where there is insufficient evidence to complete the Clandestine Drug Lab Preliminary Assessment Tier Selection Criteria (TAS), DEP 1016, April 2018.

Section 6. Classification as a Tier 4. (1) A tier 4 shall include the following:

- (a) Investigation of the property by the police suggests that the lab is capable of producing large quantities, greater than one (1) pound of methamphetamine, reagents, or precursors during a production event;
  - (b) Investigation shows severe environmental effects outside the structure due to potentially large quantities of hazardous materials dumped or released, or drummed and buried wastes are discovered on the property;
  - (c) Investigation suggests methamphetamine production was conducted longer than two (2) weeks to several months; or
  - (d) Spills and staining have occurred inside and outside the structure.
- (2) Law enforcement agencies shall consult with the cabinet prior to making this tier recommendation.
- (3) Releases of hazardous substances, pollutants, or contaminants to the environment shall be subject to the requirements of KRS 224.01-400 and 401 KAR 100:030.

Section 7. Incorporation by Reference. (1) “Clandestine Drug Lab Preliminary Assessment Tier Selection Criteria”, DEP 1016, April 2018, 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, 8 a.m. to 4:30 p.m., Monday through Friday.

(3) This material may also be obtained on the division’s Web site at [eec.ky.gov/environmental-protection/waste](http://eec.ky.gov/environmental-protection/waste). (35 Ky.R. 1954; 2737; eff. 7-6-2009; TAm eff. 7-8-2016; TAm eff. 4-11-2018; Crt eff. 8-13-2018; TAm eff. 5-7-2019.)