

401 KAR 42:005. Definitions for 401 KAR Chapter 42.

RELATES TO: KRS 224.1, 224.10, 224.60, 40 C.F.R. 280 Subpart A, 42 U.S.C. 6991 - 6991m, 9601-9675

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.60-105, 42 U.S.C. 6991-6991m

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) 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(2) 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 human health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for underground storage tank (UST) systems. This administrative regulation establishes definitions for 401 KAR Chapter 42.

Section 1. Definitions. Except as established in this section, definitions for 401 KAR Chapter 42 shall be as established in 40 C.F.R. 280.12 and 280.250.

(1) "Analytical Testing":

(a) Means:

1. The techniques established in Test Methods for Evaluating Solid Waste Physical/Chemical Methods, U.S. EPA Publication SW-846 as referenced in 40 C.F.R. 260.11(c)(3); or
2. Cabinet-approved techniques based on best management practices, including the required quality assurances and quality controls used to identify the quantitative, chemical makeup of a sample; and

(b) Does not mean field instruments, qualitative, or semi-quantitative techniques utilized to inform decision making, but not utilized to determine regulatory compliance.

(2) "Background" means the concentration of substances consistently present in the environment at, or regionally proximate to, a UST system release, but outside of the influence of the UST system release. The two (2) types of background are natural background and ambient background.

(3) "Bodily injury and property damage" is defined by KRS 224.60-115(1).

(4) "Cabinet" is defined by KRS 224.1-010(8).

(5) "Cathodic protection tester" means a person accredited or certified in accordance with 401 KAR 42:020, Section 11(9).

(6) "Change in service" means continued use of a UST system that previously stored a regulated substance to store a non-regulated substance.

(7) "Claim" is defined by KRS 224.60-115(3).

(8) "Contamination" means degradation in the quality of surface water, sediment, groundwater, air, soil, or bedrock as a result of human activities.

(9) "Contract" means the legally-binding written agreement for performance of corrective action entered into by an owner or operator and an eligible company or partnership.

(10) "Corrective action":

(a) For purposes of 401 KAR 42:250 and 42:330, is defined by KRS 224.60-115(4); or

(b) For purposes of 401 KAR 42:020 and 42:060, means those actions necessary to protect human health and the environment if there is a UST system release. Corrective action includes initial response remedial actions to clean up contaminated groundwater, surface waters or soil, actions to address residual effects after initial corrective action is taken, and actions taken to restore or replace potable water supplies. Corrective action also includes actions necessary to monitor, assess, and evaluate a UST system release,

as well as actions necessary to monitor, assess, and evaluate the effectiveness of remedial action after a UST system release has occurred.

(11) "Delivery prohibition" means prohibiting the delivery, deposit, or acceptance of a regulated substance to an underground storage tank that has been determined to be ineligible by the cabinet in accordance with 401 KAR 42:020 for delivery, deposit, or acceptance.

(12) "Division" is defined by KRS 224.60-115(6).

(13) "Domestic-use cistern" means a 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.

(14) "Domestic-use spring" means a perennial spring continuously utilized by humans for consumption or other potable uses resulting in dermal or inhalation exposure.

(15) "Domestic-use well" means a well currently used or potentially used by humans for consumption or other uses resulting in dermal or inhalation exposure.

(16) "Double walled" means factory certified construction utilizing an inner wall and an outer wall with an interstitial space between the inner wall and outer wall suitable for interstitial monitoring.

(17) "Eligible company or partnership" means a person issued a letter of eligibility in accordance with 401 KAR 42:250.

(18) "Empty" means all regulated substances have been removed from the UST system using commonly employed practices so that not more than two and five-tenths (2.5) centimeters (one (1) inch) of residue, or zero and three-tenths (0.3) percent by weight of the total capacity of the UST system, remain in the system.

(19) "Entry level" means a deductible amount equal to the financial responsibility the owners or operators shall establish and maintain in accordance with KRS 224.60-120, except for actions established in 401 KAR 42:250, Section 5(3).

(20) "Environmental emergency" is defined by KRS 224.1-400(1)(d).

(21) "Facility" is defined by KRS 224.60-115(7).

(22) "Field blank" means an aliquot of reagent water exposed to the environment during field sample collection and processed in the laboratory as an environmental sample. A field blank is used to document that contamination is not introduced during sample collection.

(23) "Financial ability" means the capacity of a petroleum storage tank owner or operator to finance the performance of corrective action.

(24) "Free product" is defined by KRS 224.60-115(9).

(25) "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table, and perched water zones below the B-soil horizon, including water circulating through fractures, bedding planes, and solution conduits.

(26) "Hydrogeologically upgradient" means in the direction from a point of lower hydrostatic pressure to a point of higher hydrostatic pressure, as defined by wells or piezometers constructed to the same depth, or in the direction from a point where a lower water table elevation exists to a point where a higher water table elevation exists, as defined by wells or piezometers.

(27) "Independent third-party evaluator" means a consulting firm, test laboratory, not-for-profit research organization, or educational institution with no organizational or financial conflict of interest.

(28) "Interior lining" means corrosion and chemical resistance materials that are applied to the inside of the tank to protect the internal surface of the tank from corrosion.

(29) "Interstitial space" means the area between the inner and outer wall of any component of a UST system.

(30) "Liquid-tight" means impervious to the passage of water or a liquid regulated substance.

- (31) "Monitoring" means the act of systematically collecting and accessing data on operational parameters or on the quality of the air, soil, bedrock, groundwater, sediment, or surface water.
- (32) "Motor fuel" is defined by KRS 224.60-115(12).
- (33) "Newly discovered UST system" means a UST system at a UST facility that would not have been discovered by the owner or operator by the exercise of ordinary diligence.
- (34) "Occurrence" is defined by KRS 224.60-115(13).
- (35) "Off-site" means any area beyond the point of compliance.
- (36) "On-site" means the area within the point of compliance.
- (37) "Operational life" means the period beginning when installation of the UST system has commenced and ending when the UST system is closed in accordance with 401 KAR 42:060.
- (38) "Overfill release" means a UST system release that occurs if a UST system is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.
- (39) "Permanent closure" means:
- (a) Closure, occurring prior to December 22, 1988, in accordance with the requirements of the Kentucky Fire Marshal, and applicable industry standards when closure occurred, and that prevents future use of the UST system; or
 - (b) After December 22, 1988, removing the UST system from the ground or filling the UST system with an inert solid material, or a combination of both methods in accordance with 401 KAR 42:060, Section 6.
- (40) "Person" is defined by KRS 224.60-115(14).
- (41) "Petroleum" is defined by KRS 224.60-115(15).
- (42) "Petroleum storage tank" is defined by KRS 224.60-115(16).
- (43) "Petroleum storage tank operator" is defined by KRS 224.60-115(17).
- (44) "Petroleum storage tank owner" is defined by KRS 224.60-115(18).
- (45) "Point of compliance" means the property boundaries of the property on which the UST facility is located.
- (46) "Product deliverer" means a person that delivers or deposits regulated substances into a UST system.
- (47) "Professional engineer" is defined by KRS 322.010(3).
- (48) "Professional geologist" is defined by KRS 322A.010(4).
- (49) "Registration" means "notification" as used in 40 C.F.R. 280.22.
- (50) "Regulated substance" is defined by KRS 224.60-100(2).
- (51) "Release" is defined by:
- (a) KRS 224.60-115(20); or
 - (b) 40 C.F.R. 280.12 for the purposes of 401 KAR 42:020 and 42:060, except for a release that is permitted or authorized by the state or federal law.
- (52) "Repair" is defined by 40 C.F.R. 280.12, except that the term also includes restoration of a UST system component that has exhibited an unusual operating condition.
- (53) "Replaced" or "replacement" means:
- (a) For a tank, to remove a tank and install another tank;
 - (b) For piping, to remove fifty (50) percent or more of piping and install other piping, excluding connectors, connected to a single tank or single compartment. For multiple piping runs connected to a single tank or compartment, this definition applies independently to each piping run; and
 - (c) For ancillary equipment, to remove a piece of equipment and install new equipment.
- (54) "Residual tank materials" means accumulated tank water, bottom sediments, mixture of product and water, or other material remaining in a tank after removal of tank contents.

(55) "Sump" means a subsurface area designed to provide access to UST system equipment.

(56) "Surface water" means:

(a)

1. Those waters having well-defined banks and beds, either constantly or intermittently flowing;
2. Lakes and impounded waters;
3. Marshes and wetlands; and
4. Subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection to the surface; and

(b) Does not mean effluent ditches and lagoons used for waste treatment that are situated on property owned, leased, or under valid easement by a permitted discharger.

(57) "Suspected UST system release" means the observation of an unusual operating condition or an unconfirmed UST system release.

(58) "Tank contents" means accumulated tank water, bottom sediments, or mixture of product and water, that is removed from a tank at one (1) time by the same method and that is accepted by a recycling facility.

(59) "Third party" is defined by KRS 224.60-115(22).

(60) "Trip blank" means a sample of analyte-free media taken from the laboratory to the sampling site and returned to the laboratory unopened. A trip blank is used to document contamination attributable to shipping and field handling procedures per cooler per sampling event.

(61) "Underground storage tank" is defined by KRS 224.60-100(1).

(62) "Unusual operating condition" means an abnormal condition observed during the normal use of a UST system, including erratic behavior of product dispensing equipment, the sudden loss of product from a portion of the UST system, the unexplained presence of water in the tank exceeding one (1) inch, a failing result from a tank or line tightness test, a failing result of a corrosion protection evaluation, a failing result of a spill containment device test, a failing result of an under-dispenser containment test, a failing result of a containment sump test, an unexplained failing result from a release detection method or device, an unexplained inventory discrepancy, two (2) consecutive months of inconclusive statistical inventory reconciliation (SIR) results, an unexplained equipment failure or malfunction, an unexplained presence of vapors, an unexplained presence of product in sumps, under-dispenser containment or a spill containment device, infiltration of liquid into the interstitial space of a UST system, an unexplained overflow or release detection alarm, or evidence of a release of a regulated substance.

(63) "UST facility" means all UST systems owned or operated by an owner or operator, and located on a single parcel of property or on a contiguous or adjacent property.

(64) "UST site" or "site" means UST facility.

(65) "Vapor intrusion" means the presence of volatile and semi-volatile organic compounds in residential or commercial buildings, assessed in accordance with Section 7.3 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060, resulting from contaminated subsurface media originating from a UST system release.

(22 Ky.R. 427; 918; eff. 11-14-1995; 23 Ky.R. 986; eff. 3-12-1997; 29 Ky.R. 2146; 2458; eff. 4-11-2003; 32 Ky.R. 2109; 33 Ky.R. 456; 732; eff. 9-13-2006; 37 Ky.R. 2686; 38 Ky.R. 255; 510; eff. 10-6-2011; Crt eff. 10-9-2018; 45 Ky.R. 1365, 2360, 2630; eff. 4-5-2019.)