

**Kansas Department of Health and Environment
Division of Environment**

ENVIRONMENTAL BENEFIT STATEMENT

Pursuant to K.S.A. 2019 Supp. 77-416, and amendments thereto

PROPOSED AMENDMENTS TO STORAGE TANK REGULATIONS

K.A.R. 28-44-12 through K.A.R. 28-44-31

Executive Summary of Amended Regulations

K.S.A. 65-34,105 authorizes the Secretary of the Kansas Department of Health and Environment (KDHE) to adopt rules and regulations necessary to administer and enforce the provisions of the Kansas Storage Tank Act (K.S.A. 65-34,100). The Petroleum Products Storage Tanks regulations (K.A.R. 28-44-12 through 28-44-29) were established in 1990. These regulations provide guidance to tank owners and operators by describing requirements relevant to storage tanks and storage tank systems. Prevention of product releases, specialized equipment, tank owner/operator compliance and regulatory enforcement are important factors encompassed within the storage tank regulations.

The storage tank regulations adopted the federal regulations by reference with limited changes. As stated in K.A.R. 28-44-12 of the 1990 regulations, “Any reference in these rules and regulations to standards, procedures, or requirements of 40 C.F.R. 280 shall constitute a full adoption by reference of the part, subpart, and paragraph so referenced...”. The Environmental Protection Agency (EPA) mandates all States to amend their storage tank regulations to coincide with the amended federal regulations of 2015 cited in 40 C.F.R. 280.

KDHE amended applicable statutes within the Storage Tank Act at various times when required by federal regulation amendments. Although the storage tank regulations haven’t been amended over time, the requirements of the amended and adopted federal regulations have been implemented. Examples include 1) secondary containment requirements in K.A.R. 28-44-19 that were implemented in 2013, and 2) operator training and requirements noted in new regulation K.A.R. 28-44-30 that were previously implemented in 2007 due to federal grant guidelines. Previously deferred tanks requirements noted in new regulation K.A.R. 28-44-31 will be implemented upon approval of the amended regulations.

KDHE secured State Program Approval (SPA) from the EPA in 1994. This approval gives KDHE the authority to manage the storage tank programs including receipt of federal funding to manage enforcement programs, inspect regulated facilities, and investigate/remediate contaminated sites. KDHE must apply for and secure EPA’s re-authorization of SPA (Re-SPA) to continue state management of storage tank programs.

KDHE met with external stakeholders to review and discuss the mandated federal requirements of 40 C.F.R. 280 and obtain feedback. KDHE’s goal was to provide information to industry representatives and address noted concerns.

The purpose of these regulatory changes is to expand on the storage tank regulations of 1990, and address EPA’s requirements to update state regulations. KDHE addressed other subjects in the regulations to streamline processes within the Storage Tank Program. An agency document was developed, titled “Kansas Storage Tank Program Document”, which includes numerous technical requirements. Several regulations within Article 44 reference this agency document. Additional revisions were made throughout the regulations to remove duplicative language that is already contained in the statutes. Grammatical changes were made to reflect current regulatory style. A summary of each of the amended regulations follows.

Summary of Substantive Changes

K.A.R. 28-44-12. General provisions.

This regulation describes the general overview of the federal regulations being adopted by reference unless otherwise specifically stated in these regulations. This amended regulation includes a change in the acceptable forms of payment, a statement of a penalty for owner or operator non-compliance, a review of compliance dates, and contractor license suspension or revocation.

K.A.R. 28-44-13. Program scope.

This regulation contains general information about the requirements of each owner or operator of underground storage tanks (UST's) and UST systems which are included in, or excluded from, this article, and adopts by reference the federal regulations described in 40 C.F.R. 280.10 and 280.11. The title of this regulation changed which removed the 'interim prohibition' statement. The amended regulations also include UST system installation requirements for UST's that are partially excluded from the storage tank regulations. Each owner or operator of some previously deferred tanks and tank systems are now expected to be in compliance with this article.

K.A.R. 28-44-14. Definitions.

This regulation includes the definitions of terms used throughout the regulations which contains an adoption of specific terms in 40 C.F.R. 280.12, 280.92 and 280.250, and the definitions in K.S.A. 65-34, 102. Changes include the removal of defined terms found in the Kansas statute and federal regulations. New or revised definitions include: Drop Ticket, EPA, Installation, License, Out-of-Service, Overfill, Site Assessment, Storage Tank Operation, These Regulations, and UST Remover.

K.A.R. 28-44-15. Application for installation or modification of an underground storage tank.

Several changes were made to this regulation, some of which are found in the adopted agency document. The first change is in the description of the anchoring system used to hold the UST in place. Anchoring systems will be used at all times, regardless of the depth to groundwater whereas the previous requirement was specific to shallow groundwater conditions. An implementation cost increase is not anticipated related to this anchoring change, as the tanks are already routinely anchored. The second change is to increase the installation application fee from \$20/tank to \$100/tank, and the total includes the UST registration fee and the first year operating permit fee. The third change is the relocation of the directions to submit the completed technical drawings from this regulation to K.A.R. 28-44-16.

K.A.R. 28-44-16. Underground storage tank systems; design, construction, installation, modification and notification.

This regulation adopts by reference the federal regulations described in 40 C.F.R. 280.20, 280.21 and 280.22. Several changes were made to this regulation. To begin, the title of the regulation was changed to reflect the location of modification requirements. Secondly, the requirement for secondary containment of UST systems was added due to the federal regulation requirement effective in 2013. KDHE implemented the federal regulation requirements in 2013. Another change is the addition of the federal requirement of under-dispenser containment (UDC), which KDHE implemented in 2013 according to K.S.A. 65-34-138, prior to the federally mandated date in 2016.

K.A.R. 28-44-17. Underground storage tank registration and operating permit.
The title of this regulation was changed to include 'registration'. The fee for registration notification and the operating permit were previously combined; the amended regulation separates these two actions and fees. The fee associated with the one-time UST registration notification will increase from \$10/tank to \$20/tank, with the late penalty increasing from \$10/facility to \$50/tank. The fee associated with the annual UST operating permit will increase from \$10/tank to \$25/tank. The late penalty will increase from \$10/facility to \$50/tank if documents or payment, or both, are not received by the initial deadline of April 30th each year. If documents or payment, or both, have not been received by August 1st each year, an additional penalty of \$100/tank will be assessed. The increase in fee and penalty amounts will encourage each tank owner or operator to submit the required documents and remit their payments by the initial deadline.

K.A.R. 28-44-18. Registration of non-regulated underground storage tanks.

This regulation describes the condition that any owner or operator of a non-regulated tank may register that tank for the purpose of qualifying an owner or operator to participate in the petroleum storage tank release trust funds. Grammatical changes were made to clarify text.

K.A.R. 28-44-19. General operating requirements.

This regulation adopts by reference the federal regulations described in 40 C.F.R. 280.30 through 280.36. The amended regulation states specific processes to follow for system testing and the enhanced walkthrough inspections as directed by the federal regulations and will help to identify any issues with equipment in a timely manner.

K.A.R. 28-44-20. Underground storage tank contractor licensing.

This regulation states that KDHE requires the contractor to be licensed in Kansas and describes the process applicants need to follow to obtain a license for their company. Grammatical changes were made to improve text.

K.A.R. 28-44-21. Underground storage tank installer and remover licensing.

KDHE requires individual contractors (installers and removers) to be licensed in Kansas to conduct work in Kansas. This amended regulation adds the licensing of the cathodic protection installer and is specific to Kansas regulations.

K.A.R. 28-44-22. Underground storage tank tester licensing.

This regulation requires tank testers to be licensed by KDHE to conduct work in Kansas. The amended regulation adds licensing of the cathodic protection and secondary containment testers and is specific to Kansas regulations.

K.A.R. 28-44-23. Release detection.

This regulation adopts by reference the federal regulations described in 40 C.F.R. 280.40 through 280.45. KDHE implemented release detection requirements on July 1, 2013 as directed by previous federal regulation amendments which was prior to the federal regulation effective date of 2016. The amended regulations list compliance dates, and the requirements for waste oil storage tanks and standby generator tanks. In the amended regulation, Kansas does not allow the option of vapor and groundwater monitoring as acceptable methods of release detection, except vapor monitoring can be used for the previously deferred airport hydrant fuel distribution systems.

K.A.R. 28-44-24. Release reporting, investigation, and confirmation.

This regulation adopts by reference the federal regulations described in 40 C.F.R. 280.50 through 280.53. KDHE remains consistent with the federal regulations and adds that, regardless of the quantity, any belowground release shall be reported to the department.

K.A.R. 28-44-25. Release response and corrective action for UST systems.

This regulation adopts by reference the federal regulations described in 40 C.F.R. 280.60 through 280.67. The title of this amended regulation was minimized.

K.A.R. 28-44-26. Out-of-service UST systems and closure.

This regulation adopts by reference the federal regulations described in 40 C.F.R. 280.70 through 280.74. This amended regulation title was minimized. This amended regulation enhances the timing criteria for permanent closure of UST's upon completion of a site assessment of the excavation zone.

K.A.R. 28-44-27. Financial responsibility.

This regulation adopts by reference the federal regulations described in 40 C.F.R. 280.90, 280.91, 280.93 through 280.115. The definitions in 280.92 are included in K.A.R. 28-44-14 Definitions and are also adopted by reference. This amended regulation adds an exception to a full adoption of the federal regulation subpart to clarify the wording in related insurance documents pertaining to the Petroleum Storage Tank Release Trust Fund.

K.A.R. 28-44-28. Aboveground storage tank fees. Regulation Revoked.

This regulation described the acceptable forms of payment applicable to aboveground storage tank (AST) registration. Information from this regulation is included in K.A.R. 28-44-12 and did not need to be reiterated.

K.A.R. 28-44-29. Aboveground storage tank operating permit.

This regulation describes the process and fee required to register AST's. The permit shall be openly displayed at each permitted facility. The fee for the permit is unchanged, but the proposed late penalty will increase from \$10/facility to \$50/tank.

K.A.R. 28-44-30. Operator Training and Requirements.

This regulation addresses the requirements for each owner or operator to designate different classes of operators for each UST system and adopts by reference the federal regulations described in 40 C.F.R. 280.40 through 280.45. A description of each type of class category (Class A, Class B and Class C operator) and the requirements for each class are provided in the regulation. KDHE began offering operator training classes in 2007 as directed by federal grant guidelines and required facility owners and operators to have a Class A or Class B operator designated for their facilities by 2012. This is well in advance of the federal regulation effective date of 2018. Kansas requires Class A and Class B operators to meet additional training and testing requirements, and a 'comparable examination' is not an acceptable form of testing. The Class C operator must be trained by either the Class A operator or the Class B operator and not through a 'comparable examination'. Kansas offers free operator training classes to encourage participation and certification. This regulation adds the Kansas requirement that the Class A operator reside or be stationed within 4 hours of their managed facilities to improve response time in the event of an emergency.

K.A.R. 28-44-31. UST systems with field-constructed tanks and airport hydrant fuel distribution systems.

This regulation describes the systems that were previously deferred from the state and federal storage tank regulations and adopts by reference the federal regulations described in 40 C.F.R. 280.251 and 280.252. The definitions in 40 C.F.R. 280.250 are included in K.A.R. 28-44-14 Definitions and are also adopted by reference. Compliance requirements are detailed in this regulation. The federal regulation amendment became effective in 2015 for these previously deferred systems; KDHE will begin implementing these changes on the effective date of the amended regulations with phased-in compliance requirements.

Fees

There are several applications, registrations, permits and licenses with respective fees and penalties noted throughout this article. These include the UST installation application, UST registration, UST operating permit, contractor company license, tank installer, remover and tester licensing, and AST operating permit. The amended regulations include an increase in fees or late penalties for several of these items which are detailed in Table 2 of the Economic Impact Statement. KDHE has not increased any fees for over 20 years and in comparison, the proposed fee amounts are at or below fees of other states. The increase in the operating permit late penalty will likely improve the response time for each owner or operator to submit required documents and accompanying fees. A timely document and payment submittal will subsequently and positively affect the department's compliance numbers.

Environmental Benefit Statement

1) Need for proposed amendments and environmental benefit likely to accrue.

a. Need.

The storage tank regulations have been in place since 1990, which fully adopted the federal regulations, and reflected the statutes outlined in the Kansas Storage Tank Act of 1989. Since 1990, several amendments were made to the federal regulations, and Kansas has been in compliance with these requirements through time. The amended regulations will help ensure the tank owners and operators know what is expected of them, while maintaining compliance with federal regulations. Kansas achieved State Program Approval (SPA) status from the EPA Region 7 Office in 1994. According to EPA guidelines, Kansas will need to apply for re-authorization of SPA (or Re-SPA) immediately following regulation approval in order to maintain state oversight of Kansas storage tank programs.

b. Environmental benefit.

An increased awareness and subsequent actions taken by owners and operators at petroleum fueling facilities will reduce the occurrence of releases from a UST or UST system, resulting in more protection of human health and the environment. Additional system testing and inspection requirements will add to the protection of the state's resources through prevention of releases into the environment.

2) When applicable, a summary of the research or data indicating the level of risk to the public health or the environment being removed or controlled by the proposed regulations or amendments.

The release of a regulated substance from a storage tank can have a significant impact on soil and groundwater, especially when human contact is made with contaminated media. By preventing regulated substances from entering into the soil and groundwater, KDHE believes the mandated compliance measures in these amended regulations reduce the occurrence of a release and thus reduces the risk of exposure to the public and environment. The addition of enhanced inspections will result in identifying an equipment problem before a release occurs.

3) If specific contaminants are to be controlled by the proposed regulation or amendment, a description indicating the level at which the contaminants are considered harmful according to current available research.

In the event a release occurs, KDHE refers to the Risk-Based Standards for Kansas (RSK) Manual and Risk-Based Corrective Action documents to evaluate risk associated with the regulated substances. Risk-based evaluations and decisions are made according to established processes within the Storage Tank Program.