



Kansas Administrative Regulations  
Kansas Department of Health and Environment

Notice to Reader

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Where possible KDHE will append changed regulations to the appropriate article. Once again, the lack of any attachments should not be construed as meaning there are no revisions.

Nothing contained herein should be construed as legal advice by KDHE. If you are not an attorney, you should secure competent counsel to interpret the regulations and advise you.

Office of Public Information  
Kansas Department of Health & Environment

## *Notes*

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The *Kansas Register* notes the following changes:

by a licensed professional land surveyor or professional engineer licensed to practice in Kansas. The map shall be submitted to the division of environment within 30 days following the completion of the plugging operation. (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-171d; effective May 1, 1979; amended May 1, 1981; amended May 1, 1984.)

**28-43-9. Waiver of specific requirements.** The secretary may grant an exception to a requirement provided in these regulations, if the applicant or operator can show good cause for the granting of such an exception, and presents an alternative to the requirement which will insure that the objectives of these regulations will be achieved. Requests for an exception shall be made, in writing, to the secretary. The secretary shall grant or deny the request within fifteen (15) days of the receipt thereof and shall notify the person requesting the exception, in writing, of the decision. If the request is denied, the secretary will specify in the notice the reasons for the denial of the request. (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-171d; effective May 1, 1979; amended May 1, 1981.)

**28-43-10. Appeals.** (a) Anyone aggrieved by a decision of the secretary of the state department of health and environment that limits or prohibits the use of a salt solution mining well or wells may within ten (10) days of receipt of said decision request an administrative hearing. The request shall be in writing and shall state wherein the decision complained of is unlawful or unreasonable. Upon receipt of such request, it shall be the duty of the secretary of health and environment to fix a date for hearing. The administrative hearing will be held by the secretary or a designated hearing officer. The secretary or designated representative shall administer oaths to all the witnesses and the evidence at the hearing shall be taken under oath or affirmation and the witness shall be subject to cross-examination. On the basis of said hearing, findings of fact and conclusions of law shall be made and an order issued. The order of the secretary shall be final unless appealed to the courts within thirty (30) days after the order has been made.

(b) Any notice, order or instrument issued by or with the authority of the secretary may be made by mailing a copy of the notice, order, or other instrument by registered or certified mail directly to the person affected at his last known post-office

address as shown by the files or records of the secretary. (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-171d; effective May 1, 1979; amended May 1, 1981.)

**28-43-11. Salt solution mining operations; fees.** An annual fee of \$1,300 for permitting, monitoring and inspecting salt solution mining operations shall be paid by each person, firm, association or corporation operating salt solution mining wells. The fee shall be paid by April 1 of each year. Any person, firm, association or corporation who fails to pay the amount due by April 1 shall be subject to permit revocation. (Authorized by and implementing K.S.A. 1984 Supp. 65-171d; effective, T-85-7, Feb. 15, 1984; effective May 1, 1984; amended May 1, 1985.)

#### **Article 44.—PETROLEUM PRODUCTS STORAGE TANKS**

**28-44-1 to 28-44-10.** (Authorized by and implementing K.S.A. 65-171d; effective May 1, 1981; revoked Nov. 26, 1990.)

**28-44-11.** (Authorized by and implementing K.S.A. 1984 Supp. 65-171d; effective, T-85-7, Feb. 15, 1984; effective May 1, 1984; amended May 1, 1985; revoked Nov. 26, 1990.)

**28-44-12. General provisions.** (a) Any reference in these rules and regulations to standards, procedures, or requirements of 40 CFR part 280 shall constitute a full adoption by reference of the part, subpart, and paragraph so referenced, including any notes and appendices associated therewith, unless otherwise specifically stated in these rules and regulations.

(b) When used in any provision adopted from 40 CFR part 280 inclusive, references to "the United States" shall be replaced with "the state of Kansas"; "environmental protection agency" or "implementing agency" shall be replaced with the "department"; "administrator" or "regional administrator" shall be replaced with the "secretary"; and "federal register" shall be replaced with the "Kansas register."

(c) Fees required by K.A.R. 28-44-12 through K.A.R. 28-44-27 shall be in the form of a check or money order made payable to the Kansas department of health and environment. (Authorized by and implementing K.S.A. 1989 Supp. 65-34,105; effective Nov. 26, 1990.)

**28-44-13. Program scope and interim prohibition.** 40 CFR 280.10 and 280.11 as in effect on September 23, 1988 are adopted by reference. (Authorized by and implementing K.S.A. 1989 Supp. 65-34,105; effective Nov. 26, 1990.)

**28-44-14. Definitions.** (a) "Department" means the Kansas department of health and environment.

(b) "EPA" means the federal environmental protection agency.

(c) "License" means a document issued by the Kansas department of health and environment to qualified individuals or contractors authorizing such persons to engage in the business of installing, removing, modifying, upgrading, repairing, or testing of underground storage tanks. The license will specify the types of services the individual or contractor is qualified to perform.

(d) The definition of words, terms, and phrases set out in 40 CFR 280.12 as in effect on September 23, 1988 and 40 CFR 280.92 as in effect on November 9, 1989 are adopted by reference except, for the definition of the terms and phrases "operator," "owner," "person," "regulated substance," "release," "repair," "tank," and "underground storage tank" whose definitions from the Kansas storage tank act shall be followed. (Authorized by and implementing K.S.A. 1989 Supp. 65-34,105; effective Nov. 26, 1990.)

**28-44-15. Application for installation or modification of an underground storage tank.** Any person may not install, modify, or repair an underground storage tank or tank system without first obtaining a permit to do so from the department.

(a) To obtain a permit to construct and operate an underground storage tank or tank system, the following shall be submitted to the department:

(1) A completed application on a form provided by the department;

(2) Static water level information to indicate if an anchoring system will be required to prevent flotation;

(3) A description of the type of anchoring system to be utilized to prevent flotation if the tank is to be installed in a location where the water table is shallower than the base of the tank;

(4) A non-refundable \$20.00 per tank application fee.

(b) To obtain a permit to modify, upgrade or repair an underground storage tank, the following shall be submitted to the department:

(1) A completed application on a form supplied by the department describing the work to be performed, provided that repair applications may initially be made to the department by telephone if the repair is essential to protect the public health and environment, in which case a completed written application shall be submitted to the department within 30 days of the completion;

(2) Where repairs are performed as a result of a release, evidence of compliance with K.A.R. 28-48-1 and 28-48-2.

(c) Any changes to the original approved plans shall be reported to the department:

(1) When the need for changes becomes apparent after the on-site work activities have commenced, a telephone approval to modify the original plan may be obtained. The name and title of the individual approving the changes shall be documented on the as built drawings which shall reflect the actual details of the job performed;

(2) When changes become apparent before the on-site activities have commenced, an amended plan shall be submitted to the department to document changes and receive approval of such changes prior to installation.

(d) Within 30 days of completion of the work, as built drawings shall be submitted to the department with accurate details of each new installation, modification, repair, and upgrade. (Authorized by and implementing K.S.A. 1989 Supp. 65-34,105 65-34,106(a); effective Nov. 26, 1990.)

**28-44-16. Underground storage tank systems: design, construction, installation and notification.** (a) 40 CFR 280.20, 280.21, and 280.22 as in effect on September 23, 1988 are adopted by reference.

(b) All new underground storage tank installations shall be equipped with observation tubes to comply with the following requirements:

(1) Observation tubes shall be constructed in accordance with the following:

(A) Tubes shall measure four inches in diameter on the inside;

(B) Tubes shall extend from the base of the excavation to ground surface;

(C) Screened opening shall extend from the base of the excavation to a point no more than three feet below ground surface. The screened openings shall be sized to allow liquid or vapor to be intercepted by the tube without allowing the backfill materials to enter the tube;

(D) Tubes shall be equipped with water tight caps on the top and bottom;

(E) The annular space between the tube and pavement shall be sealed. The pavement or ground surface shall be graded in such a manner to prevent surface water from pooling around the tubes;

(F) Each observation tube shall be marked and secured to prevent accidental tampering.

(2) There shall be at least one observation tube for each 400 square feet of excavated area or fraction thereof. Where numerous tank excavations are located on the same property, the number of observation tubes shall be determined for each separate excavation. (Authorized by and implementing K.S.A. 1989 Supp. 65-34,105; effective Nov. 26, 1990.)

**28-44-17. Underground storage tank operating permit.** (a) Before an existing underground storage tank permit can be obtained or renewed, the owner shall comply with the following requirements:

(1) The underground storage tanks shall be registered with the department as required by K.A.R. 28-44-16;

(2) An annual registration fee of \$10.00 per tank shall be paid to the department by each owner or operator of an underground storage tank prior to April 30 of each year;

(3) A late notice fee of \$10.00 shall be charged for each facility which fails to submit the required fees prior to April 30 of each year.

(b) After June 1, 1991 no person shall place a regulated substance in a regulated underground storage tank unless a valid permit is openly displayed at the facility. (Authorized by and implementing K.S.A. 1989 Supp. 65-34,105, 65-34,106(a); effective Nov. 26, 1990.)

**28-44-18. Registration of non-regulated underground storage tanks.** (a) Any owner or operator of a non-regulated tank who wishes to register a tank, shall provide the department with the following information on the forms provided by the department:

(1) Owner's name, address, and telephone number;

(2) Facility address or location;

(3) Tank status;

(4) Tank age;

(5) Tank capacity;

(6) Tank system construction details; and

(7) Product stored.

(b) The registration provided in this section is for the purpose of qualifying an owner or operator to participate in the petroleum storage tank release trust fund. Voluntary registration of non-regulated underground storage tanks will not bring any owner or operator of such a non-regulated tank under the mandatory provisions of the Kansas storage tank act, K.S.A. 1989 Supp. 65-34,101. (Authorized by and implementing K.S.A. 1989 Supp. 65-34,105; effective Nov. 26, 1990.)

**28-44-19. General operating requirements.** 40 CFR 280.30, 280.31, 280.32, 280.33, and 280.34 as in effect on September 23, 1988 are adopted by reference. (Authorized by and implementing K.S.A. 1989 Supp. 65-34,105; effective Nov. 26, 1990.)

**28-44-20. Underground storage tank contractor licensing.** (a) Applicants for an underground storage tank contractor license shall submit the following to the department:

(1) A completed application on a form provided by the department;

(2) A licensing fee of \$200.00 to secure a license to remain in force until two years from the initial licensing date.

(b) Applicants for renewal of an underground storage tank contractor license shall submit the following to the department:

(1) A complete application on a form provided by the department;

(2) An annual renewal fee of \$100.00. (Authorized by and implementing K.S.A. 1989 Supp. 65-34,105; effective Nov. 26, 1990.)

**28-44-21. Underground storage tank installer's licensing.** (a) Applicants for an underground storage tank installer license shall:

(1) Submit the following to the department:

(A) A completed application on a form provided by the department;

(B) A licensing fee of \$100.00 to secure a license to remain in force until two years from the initial licensing date. No portion of the fee shall be refunded if the license is suspended, revoked or if the individual discontinues the licensed activities within the state during the licensed period;

(C) For each type of installation, evidence of successful completion of all training required by the manufacturers of the equipment to be installed or repaired under the applicant's supervision. Evidence shall include dates, locations, and names of courses completed.

(2) Pass the licensing examination administered by the department with a score of 70% or greater on the general examination and the specific examination or examinations for each area to be supervised by the installer.

(b) At least 45 days prior to expiration, applicants for renewal of an underground storage tank installer license shall:

(1) Submit the following items to the department:

(A) A completed application on a form provided by the department;

(B) An annual renewal fee of \$50.00. The fee shall cover a 12-month period beginning on the effective date of the issuance or renewal of the license. No portion of the fee shall be refunded if the license is suspended, revoked or if the individual discontinues the licensed activities within the state during the licensed period;

(C) Evidence of successful completion of all training, required by the manufacturers of the equipment to be installed or repaired under the applicant's supervision. Evidence shall include dates, locations, and names of the courses.

(2) Pass the licensing examination administered by the department with a score of 70% or greater on the general examination and the specific examination or examinations for each area to be supervised by the installer. (Authorized by and implementing K.S.A. 1989 Supp. 65-34,105; effective Nov. 26, 1990.)

**28-44-22. Underground storage tank tightness tester's licensing.** (a) It shall be unlawful for any person to inspect or hold oneself out as authorized to inspect underground storage tanks and associated lines unless the person is licensed in accordance with this section. Applicants for an underground storage tank tightness testing license shall:

(1) Submit the following to the department:

(A) A completed application on a form provided by the department;

(B) A licensing fee of \$100.00 to secure a license to remain in force until two years from the initial licensing date. No portion of the fee shall be refunded if the license is suspended, revoked or if the individual discontinues the licensed activities within the state during the licensed period;

(C) Evidence of successful completion of all training, required by the manufacturers of the equipment to perform tightness testing under the

applicant's supervision. Evidence shall include dates, locations, and names of courses completed.

(2) Pass the licensing examination administered by the department with a score of 70% or greater.

(b) Any license applied for may be denied or any license issued may be suspended or revoked for any underground tank storage tightness tester's license issued, pursuant to these regulations if found, after notice and an opportunity for a hearing conducted in accordance with the provisions of the Kansas administrative procedure act, that the applicant or licensee, whichever is applicable, has:

(1) Fraudulently or deceptively obtained or attempted to obtain a license;

(2) Failed at any time to meet the qualifications for a license or to comply with any provision or requirement of these regulations; or

(3) Failed to submit, to the department, a copy of each tank tightness test performed on a regulated tank in the state of Kansas.

(c) At least 45 days prior to expiration, applicants for renewal of an underground storage tank tightness tester's license shall:

(1) Submit the following to the department:

(A) A completed application on a form provided by the department;

(B) An annual renewal fee of \$50.00. The fee shall cover a 12-month period beginning on the effective date of the issuance or renewal of the license. No portion of the fee shall be refunded if the license is suspended, revoked or if the individual discontinues the licensed activities within the state during the licensed period;

(C) Evidence of successful completion of all training, required by the manufacturers of the equipment used by the tester. Evidence shall include dates, locations, and names of courses completed.

(2) Pass the licensing examination administered by the department with a score of 70% or greater. (Authorized by and implementing K.S.A. 1989 Supp. 65-34,105; effective Nov. 26, 1990.)

**28-44-23. Release detection.** (a) 40 CFR 280.40, 280.41, and 280.42 as in effect on September 23, 1988 are adopted by reference.

(b) 40 CFR 280.43 as in effect on September 23, 1988 is adopted by reference except for the following changes:

(1) The following language shall be added to 40 CFR 280.43(a) following 40 CFR 280.43(a) (6):

“(7) All underground storage tank systems shall utilize inventory control methods with the following exception. Waste oil storage tanks with capacities of 2000 gallons or less may utilize manual tank gauging in place of inventory control. Waste oil storage tanks using manual tank gauging shall report a suspected release if the following standards are exceeded.”

Nominal tank capacity gallons	Weekly standard (one test)	Monthly standard (average of four tests)
550 or less	10 gallons	5 gallons
551 thru 1,000	13 gallons	7 gallons
1001 thru 2000	26 gallons	13 gallons

(2) 40 CFR 280.43(b) (4) shall read as follows:

“(4) A leak is suspected and subject to the requirements of Subpart E if the variation between beginning and ending measurements exceeds 10 gallons for a weekly test or 5 gallons for a monthly average of four tests.”

(3) 40 CFR 280.43(b) (5) shall read as follows:

“(5) Only tanks of 550 gallons or less nominal capacity may use this as the method of release detection.”

(4) 40 CFR 280.43(f) shall read as follows:

“(f) Groundwater Monitoring. The following conditions shall exist before this release detection method can be employed at a take site:

(1) The stored substance is immiscible in water and has a specific gravity less than one;

(2) Groundwater has been encountered within the tank excavation and the tank has been buried at least partially below the groundwater surface. The hydraulic conductivity of the fill material used to backfill around the tanks is not less than 0.01 cm/sec. The monitoring wells shall intercept the excavation zone around the storage tank;

(3) The monitoring wells shall be constructed and located such that any contamination which is floating on the groundwater surface will be detected. The wells shall be constructed with the appropriate screen size to prevent sediments from entering the well bore. The screen shall extend from a point at least two feet above the highest water level to the base of the tank excavation;

(4) The monitoring wells shall be constructed to prevent surface water from entering the tank excavation through conduits created by these wells;

(5) Continuous or manual monitoring devices or methods shall be capable of detecting a hydrocarbon layer of 1/8 inch or greater thickness on the groundwater;

(6) Monitoring wells shall be clearly marked and secured to prevent unauthorized access and tampering;

(7) Within and immediately below the UST system excavation zone, the site is assessed to ensure compliance with the requirements in paragraphs (f) (1) through (5) of this section and to establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains product.”

(5) The following language shall be added to 40 CFR 280.43 following 40 CFR 280.43(h):

“(i) Tanks which store heating oil for consumptive use on the premises where stored may utilize inventory control measures as a release detection method if the following conditions exist:

(1) The owner or operator of the underground storage tank system is using inventory control as required by K.A.R. 28-44-23;

(2) Fuel is dispensed less than 24 hours during any given month from the underground storage tank system;

(3) No more than 500 gallons of fuel is dispensed from the system during any given month;

(4) An inventory measurement is made immediately before and immediately after fuel is dispensed from the underground storage tank system.”

(c) 40 CFR 280.44 and 280.45 as in effect on September 23, 1988 are adopted by reference. (Authorized by and implementing K.S.A. 1989 Supp. 65-34,105; effective Nov. 26, 1990.)

**28-44-24. Release reporting, investigation, and confirmation.** 40 CFR 280.50, 280.51, 280.52, and 280.53 as in effect on September 23, 1988 are adopted by reference except that 280.53(a)(1) shall read as follows:

“(1) Spill or overfill of petroleum that results in a release above the surface of the ground which exceeds 25 gallons, or that causes a sheen on nearby surface water; or any below ground release from an underground storage tank system regardless of the quantity.” (Authorized by and implementing K.S.A. 1989 Supp. 65-34,105; effective Nov. 26, 1990.)

**28-44-25. Release response and corrective action for underground storage tank systems containing petroleum or hazardous substances.** 40 CFR 280.60, 280.61, 280.62, 280.63,

280.64, 280.65, 280.66, and 280.67 as in effect on September 23, 1988 are adopted by reference. (Authorized by and implementing K.S.A. 1989 Supp. 65-34,105; effective Nov. 26, 1990.)

28-44-26. **Out-of-service underground storage tank systems and closure.** 40 CFR 280.70, 280.71, 280.72, 280.73, and 280.74 as in effect on September 23, 1988 are adopted by reference. (Authorized by and implementing K.S.A. 1989 Supp. 65-34,105; effective Nov. 26, 1990.)

28-44-27. **Financial responsibility.** 40 CFR 280.90, 280.91, and 280.93 thru 280.112 as in effect on October 26, 1988 and as amended on November 7, 1988, December 21, 1988, February 3, 1989, November 9, 1989 are adopted by reference except for the following changes:

(a) 40 CFR 280.91 (c) shall read as follows:

“(c) All petroleum marketing firms owning 13-99 USTs at more than one facility; April 26, 1991.”

(b) 40 CFR 280.91 (d) shall read as follows:

“(d) All petroleum UST owners not described in paragraphs (a), (b), or (c) of this section, including all local government entities; October 26, 1991.” (Authorized by and implementing K.S.A. 1989 Supp. 65-34,105; effective Nov. 26, 1990.)

28-44-28. **Aboveground storage tank fees.** Fees required by K.A.R. 28-44-29 shall be in the form of a check or money order made payable to the Kansas department of health and environment. (Authorized by and implementing K.S.A. 65-34,105; effective Nov. 22, 1993.)

28-44-29. **Aboveground storage tank operating permit.** (a) Before a permit for an aboveground storage tank can be obtained or renewed, the owner shall comply with the following requirements.

(1) Each aboveground storage tank shall be registered with the department as required by K.S.A. 65-34,104. Registration shall be made on forms provided by the department, and shall include the following information:

- (a) Owner's name, address, and telephone number;
- (b) facility address or location;
- (c) tank status;
- (d) tank age;
- (e) tank capacity;
- (f) tank system construction details; and
- (g) product stored.

(2) An annual registration fee of \$10.00 per tank shall be paid to the department by each owner or operator of an aboveground storage tank prior to December 31 of each year; and

(3) A late notice fee of \$10.00 shall be charged for each facility which fails to submit the required fees prior to December 31 of each year.

(b) After March 1, 1994, a regulated substance shall not be placed in an aboveground storage tank unless a valid permit is openly displayed at the facility. (Authorized by and implementing K.S.A. 65-34,105 and 65-34,106; effective Nov. 22, 1993.)

#### **Article 45.—HYDROCARBON STORAGE WELLS AND WELL SYSTEMS**

28-45-1. (Authorized by and implementing K.S.A. 65-171d; effective May 1, 1981; revoked May 1, 1984.)

28-45-2. **Definitions:** (a) “Hydrocarbon storage well system” means a well or group of wells and connecting storage cavities which have been created by solutioning or excavation of salt bearing deposits or other geological formations and subsequently developed for the purpose of storing hydrocarbons.

(b) “Production casing” means the casing inside the surface casing that extends into the salt or other geological formations.

(c) “Transportation artery” means any highway, county road, township road, private road, railroad or other such structure which is not owned by the applicant. Excluded from this definition are pipelines and power and communication lines.

(d) “Division of environment” means the division of environment of the department of health and environment.

(e) “Well” means a single unit which includes the wellhead equipment and bore hole of a storage cavity.

(f) “Abnormal loss” means any loss of stored hydrocarbon or brine that is detectable by monitoring of hydrocarbon storage well system pressures or by the observation well network.

(g) “Storage cavity” means a single underground chamber which may be accessed at the surface by one or more wells.

(h) “Well system” means two or more storage wells connected to a central point by product distribution lines. (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-171d; effective May 1, 1981; amended May 1, 1984.)