

Kentucky Administrative Regulations

TITLE 401

ENERGY AND ENVIRONMENT CABINET DEPARTMENT FOR ENVIRONMENTAL PROTECTION

401 KAR 101:001. Definitions for 401 KAR Chapter 101.

RELATES TO: KRS 218A.1431, 219.011, 224.01-010, 224.01-410, 29 C.F.R. 1926.50 - 1926.66, 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 promulgate administrative regulations for 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 is necessary to define terms that are used throughout 401 KAR Chapter 101.

Section 1. Definitions. (1) "Absorption" means:

(a) For a person or an animal, the process of a substance getting into the body through the eyes, skin, stomach, intestines, or lungs; or

(b) The process of taking in.

(2) "Acidic" means the condition of a media that contains a sufficient amount of acid substances to lower the pH below seven and zero tenths (7.0).

(3) "Acute effect" means an immediate response to a contaminant that may consist of shortness of breath; cough; chest pain; dizziness; lack of coordination; chemical irritation; burns to the skin, eyes, mouth, or nose; and in severe cases, death.

(4) "Adverse health effect" means a change in body functions or cell structure that may indicate or lead to disease or health problems.

(5) "Ambient air" means an unconfined portion of the atmosphere including open air or surrounding air.

(6) "Cabinet" is defined by KRS 224.01-010(9).

(7) "Certified contractor" means an entity or individual who completes the steps required by 401 KAR 101:010 to become recognized by the state and is authorized to conduct the decontamination services for contaminated properties following the protocols of the tiered response system.

(8) "Clandestine methamphetamine lab" is defined by KRS 224.01-410(2)(a).

(9) "Confined Space" means a space having the following characteristics:

(a) Limited means for exit and entry; and

(b) Ventilation of the space is lacking or inadequate, allowing for the potential accumulation of toxic air contaminants, flammable or explosive agents, or depletion of oxygen.

(10) "Constituent of concern" or "COC" means chemicals or compounds that include methamphetamine or related hazardous materials that may be present at inhabitable properties.

(11) "Contaminated property" is defined by KRS 224.01-410(2)(b).

(12) "Cook" means:

(a) The process of manufacturing methamphetamine or other illegal substances; or

(b) The person responsible for manufacturing methamphetamine or other illegal substances.

(13) "Decontamination standards" is defined by KRS 224.01-410(2)(c).

(14) "Encapsulation" means the act of surrounding, protecting, or sheathing a building material, by applying paint or other sealant.

(15) "Flame ionization detector" or "FID" means one (1) of several methods for detecting and quantifying primarily hydrocarbon gases. Flame ionization utilizes a hydrogen flame to ionize and detect gases that are essentially flammable; however, the process is far less sensitive to oxygen containing compounds due to the reduced carbon atoms.

(16) "Hazardous waste" is defined by KRS 224.01-010(31)(b).

(17) "Hazardous Waste Operator (HAZWOPER) training" means a forty (40) hour course required by OSHA under the General Site Worker standard pursuant to 803 KAR 2:403 and 29 C.F.R. 1926.50 through 1926.66 for workers to enter and work within an area defined as a hazardous waste site or uncontrolled hazardous waste site.

(18) "HEPA" means High-Efficiency Particulate Air Filtration system.

(19) "Home owner" means the title holder of the inhabitable property where a notice of methamphetamine contamination has been posted.

(20) "Hotel" is defined by KRS 219.011(3).

(21) "HVAC" means heating, ventilation, and air conditioning system.

(22) "Inhabitable property" is defined by KRS 224.01-410(2)(d).

(23) "Land owner" means the deed holder of the land.

(24) "Manufacturer" means a person connected to or responsible for the "manufacture", as defined by KRS 218A.1431(1), of methamphetamine.

- (25) "Methamphetamine" is defined by KRS 218A.1431(2).
- (26) "NAZI cook" means a method of producing methamphetamine using anhydrous ammonia.
- (27) "OSHA" means Occupational, Safety, and Health Administration.
- (28) "Personal protective equipment" or "PPE" means equipment for the eyes, face, head, or extremities; protective clothing; respiratory devices; or protective shields or barriers, used and maintained in a sanitary and reliable condition wherever it is necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards, or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation, or physical contact.
- (29) "Photoionization detection" or "PID" means a device used for the detection of certain VOCs, based on their ionization potential, which utilizes ultraviolet light to ionize gas molecules.
- (30) "Precursor" means compounds or mixtures containing ephedrine or pseudoephedrine.
- (31) "Property owner" means the home owner or land owner.
- (32) "Red phosphorus" means ingredients that may be used in the manufacture of methamphetamines; the strike plate on a book of matches is a frequently used source of red phosphorus.
- (33) "Related hazardous material or hazardous waste" is defined by KRS 224.10-410(2)(f).
- (34) "Render unusable" means destruction of an item to a degree so that it cannot be used for its intended purpose.
- (35) "Semi-volatile" means substances that slowly evaporate at normal temperatures or pressures.
- (36) "Solvent" means a liquid capable of dissolving or dispersing another substance.
- (37) "Surface material" is defined by KRS 224.01-410(2)(e).
- (38) "Tiered response system" means a system to address the level of clean up services required for a contaminated property based upon the degree of methamphetamine production and the degree of potential contamination resulting from methamphetamine production as indicated by the results of assessment by responding state or local law enforcement.
- (39) "Toxic agent" means a chemical or physical agent that, under certain circumstances of exposure, may cause adverse health effects.
- (40) "Volatile" means evaporating readily at normal temperatures and pressures.
- (41) "Volatile compounds" or "VC" means compounds that are in most cases organic in composition and evaporate readily into the air. (35 Ky.R. 1947; 2733; eff. 7-6-2009.)

401 KAR 101:010. Contractor certification.

RELATES TO: KRS 224.01-410, 29 C.F.R. 1926.50-1926.65, EO 2008-507, 2008-531

STATUTORY AUTHORITY: KRS 224.01-410, EO 2008-507, 2008-531

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.01-410(3) requires the cabinet to promulgate 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 criteria for contractor certification and issuance, suspension, and revocation of certification.

Section 1. Applicability. (1)(a) Sections 2 and 3 of this administrative regulation shall apply to all contractors certified by the cabinet to clean up methamphetamine contaminated properties after July 15, 2008.

(b) Contractors certified by the cabinet to clean up methamphetamine contaminated properties prior to July 15, 2008 who do not maintain certification shall be recertified as established in Sections 2 and 3 of this administrative regulation.

(2) Sections 4 through 6 of this administrative regulation shall apply to all contractors regardless of certification date.

Section 2. Certification Requirements. (1) Applicants for certified contractor shall:

(a) Complete and submit Certified Contractor Application, DEP 6079A, May 2009 to the cabinet for review;

(b) Obtain financial assurance pursuant to KRS 224.01-410(8)(a) and 401 KAR 101:020;

(c) Provide proof to the cabinet of liability insurance policy of at least \$250,000.00, pursuant to KRS 224.10-410(8)(a)3; and

(d) Certify that decontamination shall be performed in accordance with 803 KAR 2:403 and 29 C.F.R. 1926.50-1926.65. Applicants shall provide the following for review:

1. Forty (40) hour HAZWOPER Certification for all personnel performing decontamination services on methamphetamine contaminated properties; and

2. Eight (8) hour HAZWOPER refresher training certificates for all personnel performing decontamination services on methamphetamine contaminated properties.

(2) The cabinet shall review all contractor certification requirements once a completed application has been submitted; if a complete application is not submitted within six (6) months a new application shall be required.

(3)(a) Certified contractors shall submit to the cabinet copies of forty (40) hour HAZWOPER Certification or current eight (8) hour HAZWOPER refresher certificates for all personnel performing decontamination services on an annual basis.

(b) Failure to submit this information shall result in suspension of certification.

(4) Certified contractors shall report changes in application information to the Division of Waste Management, such as change of the following:

- (a) Address;
- (b) Financial assurance; or
- (c) Liability insurance, within thirty (30) days of the change.

Section 3. Issuance of Certificate. (1) Upon completion, review, and approval of the application, the contractor shall receive the following:

(a) A certification letter from the cabinet signed by the Director of the Division of Waste Management; and

(b) A copy of Kentucky Cleanup Guidance for Methamphetamine Contaminated Properties, May 2009.

(2) The cabinet shall maintain a list of certified contractors for methamphetamine contaminated properties on the division's Web site.

Section 4. Suspension of Certification. (1) A certification shall be suspended, effective immediately, upon one (1) or more of the following:

(a) The financial assurance as required by 401 KAR 101:020 is no longer held in full by the contractor; or

(b) Personnel for the contractor have not submitted the certification pursuant to Section 2(1)(d) of this administrative regulation to the cabinet.

(2) A certification shall be reinstated if the contractor comes back into compliance with the requirements of 401 KAR 101:020 and this administrative regulation and provides written documentation of such compliance to the cabinet.

Section 5. Revocation of Certification. (1) A certification shall be revoked:

(a) If the contractor certification is suspended for more than 180 days; or

(b) If the contractor is fraudulent or deceitful in the submission of inaccurate data or qualifications.

(2) If the contractor's certification is revoked, the cabinet shall collect the forfeited financial assurance of any contractor found to be in violation and the cabinet shall use the forfeited financial assurance to decontaminate methamphetamine contaminated properties pursuant to KRS 224.01-410(8)(c).

(3) Contractors who have a certification revoked pursuant to this administrative regulation shall not be eligible to be recertified by the cabinet.

Section 6. Termination of Certification. (1) A certified contractor who wishes to terminate certification for decontamination services shall submit a request to the cabinet to terminate certification.

(2) The request shall be reviewed by the cabinet.

(3) Upon verification that all work has been completed in compliance with KRS 224.01-410, and all decontamination services have ceased, the cabinet shall grant the termination of certification and release the contractor of financial assurance requirements.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Certified Contractor Application", DEP 6079A, May 2009;

(b) "Kentucky Cleanup Guidance for Methamphetamine Contaminated Properties", January 2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Waste Management, 200 Fair Oaks, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. or on the division's Web site www.waste.ky.gov. (35 Ky.R. 1949; 2734; eff. 7-6-2009.)

401 KAR 101:020. Financial requirements.

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

STATUTORY AUTHORITY: KRS 224.01-410(8), EO 2008-507, 2008-531

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.01-410(8)(d) requires the cabinet to promulgate administrative regulations to establish standards and procedures to certify contractors for the cleanup of contaminated methamphetamine 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 financial assurance requirements for certified contractors.

Section 1. Applicability. (1) This administrative regulation applies to contractors certified by the cabinet to cleanup methamphetamine contaminated properties after July 15, 2008.

(2) Contractors certified by the cabinet to cleanup methamphetamine contaminated properties prior to July 15, 2008, who do not maintain financial assurance shall meet the requirements of this administrative regulation to continue to be certified to cleanup methamphetamine contaminated properties.

Section 2. Financial Assurance Criteria. (1) The financial assurance criteria and bond requirements

apply to each contractor or company certified by the cabinet to engage in the decontamination of contaminated properties that were used for the production or processing of methamphetamine.

(2) Prior to the issuance of a certification to provide decontamination services, financial assurance shall be:

- (a) Submitted;
- (b) Reviewed; and
- (c) Approved by the cabinet if the contractor is in compliance with the requirements of this administrative regulation..

Section 3. Financial Assurance Amounts. (1) A contractor certified by the cabinet shall provide financial assurance corresponding to the level of contamination of the inhabitable property.

(a) A contractor applying for certification to clean up contaminated property assessed as a Tier 1, Tier 2, or Tier 3 level of contamination shall post and maintain financial assurance in the amount of at least \$100,000.

(b) A contractor applying for certification to clean up contaminated property assessed as a Tier 4 level of contamination shall post and maintain financial assurance in the amount of at least \$250,000.

(2)(a) A contractor certified with the cabinet prior to July 15, 2008 shall be required to maintain at least the \$50,000 financial assurance, regardless of the tier level of cleanup.

(b) A contractor certified with the cabinet prior to July 15, 2008, who does not maintain the \$50,000 financial assurance, shall meet the requirements of subsection (1) of this section.

Section 4. Financial Mechanisms. (1) The mechanisms used to demonstrate financial assurance in accordance with this administrative regulation shall ensure that the funds necessary to meet the costs of cleanup of contaminated properties shall be available within thirty (30) days of the issuance of a cabinet demand letter.

(2) The certified contractor shall execute and submit a performance agreement, as established in Section 5 of this administrative regulation, with one (1) or more of the financial mechanisms established in Sections 6 through 10 of this administrative regulation that satisfy the following criteria:

(a) The amount of financial assurance obtained from a single financial institution shall not exceed the limit of federal insurance if the assurance is provided by a financial institution that uses federal insurance to guarantee the availability of funds.

(b) The cabinet shall demand forfeiture of the financial assurance if the certified contractor fails to act with reasonable care and judgment in the performance of decontamination services or is fraudulent or deceitful in the submission of inaccurate data or qualifications.

Section 5. Performance Agreement. (1) Before the cabinet issues a certification, the applicant shall:

- (a) Complete and notarize a performance agreement pursuant to subsection (2) of this section; and
- (b) Post at least one (1) of the following financial assurance mechanisms pursuant to KRS 224.01-410:

1. A surety bond as established in Section 6 of this administrative regulation;
2. A letter of credit as established in Section 7 of this administrative regulation;
3. An escrow agreement as established in Section 8 of this administrative regulation;
4. A financial self-insurance test as established in Section 9 of this administrative regulation; or
5. A corporate guarantee as established in Section 10 of this administrative regulation.

(2) A performance agreement, guaranteeing performance of cleanup to allowable limits, shall be completed and notarized on Performance Agreement, DEP 6079D, January 2009.

Section 6. Surety Bond. (1) A surety bond shall be completed and notarized on Surety Bond, DEP 6079B, January 2009.

(2)(a) To be eligible to issue a surety bond, a surety shall be listed as acceptable in the current edition of U.S. Treasury Circular 570.

(b) The penal sum of the bond shall not exceed the amount of the surety's underwriting limitation.

Section 7. Letter of Credit. A letter of credit shall be completed and notarized on Irrevocable Letter of Credit, DEP 6079C, January 2009.

Section 8. Escrow Agreement. (1) An escrow agreement shall be completed on Escrow Agreement, DEP 6079E, January 2009.

(2) If a certificate of deposit is used in conjunction with the escrow agreement, it shall be made payable to the financial institution as the escrow agent.

Section 9. Financial Self-Insurance Test. (1) A financial self-insurance test shall be completed and notarized on Financial Self-Insurance Test, DEP 6079F, January 2009.

(2) The applicant may satisfy the requirements of this administrative regulation by passing a financial test as established in this section. The applicant shall meet the following criteria:

(a) Less than fifty (50) percent of the applicants personal gross revenues shall be derived from contaminated methamphetamine cleanup operations, and the applicant shall:

1. Satisfy at least two (2) of the following ratios:
 - a. A ratio of total liabilities to net worth less than two and zero tenths (2.0);

b. A ratio of the sum of net income plus depreciation, depletion, and amortization to total liability greater than one-tenth (0.1); or

c. A ratio of current assets to current liabilities greater than one and five-tenths (1.5);

2. Have net working capital and tangible net worth each at least six (6) times the amount of financial assurance required in Section 3 of this administrative regulation; or

(b) The applicant shall have tangible net worth of at least three (3) million dollars.

(3) To demonstrate that requirements of this test are met, the applicant shall submit the following items to the cabinet:

(a) A letter signed by the applicant, notarized, and worded as specified on Financial Self-Insurance Test, DEP 6079F, January 2009;

(b) A copy of a report by an independent certified public accountant examining the applicant's financial statements for the company's most recently completed fiscal year; and

(c) A special report from the applicant's independent certified public accountant to the applicant stating that:

1. The auditor has compared the data that the letter from the applicant specified as having been derived from the independently audited year-end financial statements for the most recent fiscal year with the amounts in financial statements; and

2. In connection with the procedure established in subparagraph 1 of this paragraph, if matters did not come to the auditor's attention that caused the auditor to believe that the specified data should be adjusted.

(4)(a) After the initial submission of the items specified in subsection (3) of this section, the applicant shall send updated information to the cabinet not later than ninety (90) days after the close of each succeeding fiscal year.

(b) This information shall include all three (3) items specified in subsection (3) of this section.

(5)(a) If the applicant no longer meets the requirements of subsection (2) of this section, notice shall be sent to the cabinet of the intent to establish alternate financial assurance, as specified in this administrative regulation.

(b) The notice shall be sent by certified mail not later than ninety (90) days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements.

(c) The applicant shall provide the alternate financial assurance not later than 120 days after the end of that fiscal year.

(6)(a) The cabinet may, based on a reasonable belief that the applicant no longer meets the requirements of this section, require reports of financial condition from the applicant in addition to those specified in subsection (2) of this section.

(b) If the cabinet finds, on the basis of these reports or other information, that the applicant no longer meets the requirements of subsection (2) of this section, the applicant shall provide alternate financial assurance as specified in this administrative regulation not later than thirty (30) days after notification of this finding.

(7)(a) The cabinet may disallow use of the financial self-insurance test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the accountant's report on examination of the applicant's financial statements.

(b) An adverse opinion or disclaimer of opinion by the independent certified public accountant shall be cause for disallowance.

(c) The applicant shall provide alternate financial assurance as established in this administrative regulation not later than thirty (30) days after notification of the disallowance.

(8) The applicant shall no longer be required to submit the items specified in subsection (2) of this section if the applicant substitutes alternative financial assurance as established in this administrative regulation.

Section 10. Wording of a Corporate Guarantee. (1) A corporate guarantee shall be completed and notarized on Corporate Guarantee, DEP 6079G, January 2009.

(2) The applicant may satisfy the requirements of this administrative regulation by passing a financial test to offer a corporate guarantee sufficient to provide the financial assurance as established in this section, in which case the applicant shall meet the following criteria:

(a) Less than fifty (50) percent of the applicants corporate gross revenues shall be derived from contaminated methamphetamine cleanup operations; or

(b) The applicant shall:

1. Satisfy at least two (2) of the following ratios:

a. A ratio of total liabilities to net worth less than two and zero tenths (2.0);

b. A ratio of the sum of net income plus depreciation, depletion, and amortization to total liability greater than one-tenth (0.1); or

c. A ratio of current assets to current liabilities greater than one and five-tenths (1.5);

2. Have net working capital and tangible net worth each at least six (6) times the amount of financial assurance required in Section 3 of this administrative regulation; or

3. Have tangible net worth of at least ten (10) million dollars.

4. Have assets in the United States amounting to at least ninety (90) percent of total assets or at least six (6) times the amount of financial assurance required in Section 3 of this administrative regulation.

5.a. Have a current rating for a most recent bond issuance of AAA, AA, A, or BBB as issued by "Standard and Poor's" or AAA, AA, A, or BAA as issued by "Moody's";

b. Have tangible net worth at least six (6) times the amount of financial assurance required in Section 3 of this administrative regulation;

c. Have tangible net worth of at least ten (10) million dollars; and

d. Have assets located in the United States amounting to at least ninety (90) percent of total assets or at least six (6) times the amount of financial assurance required in Section 3 of this administrative regulation.

(3) To demonstrate that requirements of this test are met, the applicant shall submit the following items to the cabinet:

(a) A letter signed by the applicant's chief financial officer, notarized, and worded as specified on DEP Form 6079G;

(b) A copy of a report by an independent certified public accountant examining the applicant's financial statements for the most recently completed fiscal year; and

(c) A special report from the applicant's independent certified public accountant to the applicant stating that:

1. The auditor has compared the data that the letter from the chief financial officer specified as having been derived from the independently audited year-end financial statements for the most recent fiscal year with the amounts in those financial statements; and

2. In accordance with this paragraph, if matters did not come to the auditor's attention that caused the auditor to believe that the specified data should be adjusted.

(4)(a) After the initial submission of the items established in subsection (3) of this section, the applicant shall send updated information to the cabinet not later than ninety (90) days after the close of each succeeding fiscal year.

(b) This information shall include all three (3) items established in subsection (3) of this section.

(5)(a) If the applicant no longer meets the requirements of subsection (2) of this section, notice shall be sent to the cabinet of the intent to establish alternate financial assurance, in accordance with this administrative regulation.

(b) The notice shall be sent by certified mail not later than ninety (90) days after the end of the fiscal year for which the year-end financial data show that the applicant no longer meets the requirements.

(c) The applicant shall provide the alternate financial assurance not later than 120 days after the end of that fiscal year.

(6)(a) The cabinet may, based on a reasonable belief that the applicant no longer meets the requirements of subsection (2) of this section, require reports of financial condition from the owner or operator in addition to those established in subsection (3) of this section.

(b) If the cabinet finds, on the basis of these reports or other information, that the applicant no longer meets the requirements of subsection (2) of this section, the applicant shall provide alternate financial assurance as established in this administrative regulation not later than thirty (30) days after notification of this a finding.

(7)(a) The cabinet may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the accountant's report on examination of the applicant's financial statements.

(b) An adverse opinion or disclaimer of opinion shall be cause for disallowance.

(c) The applicant shall provide alternate financial assurance as established in this administrative regulation not later than thirty (30) days after notification of the disallowance.

(8) The applicant shall no longer be required to submit the items specified in subsection (3) of this section if the applicant substitutes alternative financial assurance as established in this administrative regulation; or

(9)(a) The applicant may meet the requirements of this section by obtaining a written guarantee, hereafter referred to as a "parent corporate guarantee".

(b) The guarantor shall be the parent corporation of the certified contractor.

(c) The guarantor shall meet the requirements for applicants in subsections (2) to (7) of this section and shall comply with the terms of DEP Form 6079G.

(d)1. The parent corporate guarantee shall accompany the items sent to the cabinet as established in subsection (3) of this section.

2. The terms of the parent corporate guarantee shall provide that:

a. If the applicant fails to perform decontamination of a contaminated inhabitable property to the decontamination standards established in 401 KAR 101:040, the guarantor shall do so or shall establish a trust fund, in the name of the applicant, as established in Section 9 of this administrative regulation;

b. The parent corporate guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the applicant and to the cabinet; and

c. Cancellation shall not occur, during the 120-day period beginning on the first day that both the applicant and the cabinet have received notice of cancellation, as evidenced by the certified mail return receipts.

(e) If the applicant fails to provide alternate financial assurance as established in this administrative regulation, and fails to obtain the written approval of this alternate financial assurance from the cabinet not later than ninety (90) days after both the contractor and the cabinet have received notice of cancellation of the parent corporate guarantee from the guarantor, the guarantor shall provide the

alternate financial assurance in the name of the certified contractor.

Section 11. Use of Multiple Financial Mechanisms. (1)(a) The applicant may satisfy the requirements of this administrative regulation by establishing more than one (1) financial mechanism.

(b) These mechanisms shall be limited to the following:

1. Surety bonds;
2. Letters of credit;
3. Escrow agreements;
4. Financial self-insurance test; or
5. A corporate guarantee.

(2) The mechanisms shall be as established in Sections 5 through 10 of this administrative regulation respectively, except that it shall be the combination of mechanisms, rather than each single mechanism, that shall provide financial assurance for an amount at least equal to the financial assurance amounts established in Section 3 of this administrative regulation.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Performance Agreement", DEP 6079D, January 2009;
- (b) "Surety Bond", DEP 6079B, January 2009;
- (c) "Irrevocable Letter of Credit", DEP 6079C, January 2009;
- (d) "Escrow Agreement", DEP 6079E, January 2009;
- (e) "Financial Self-Insurance Test", DEP 6079F, January 2009; and
- (f) "Corporate Guarantee", DEP 6079G, January 2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Waste Management, 200 Fair Oaks, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained at the division's Web site at www.waste.ky.gov. (35 Ky.R. 1951; 2735; eff. 7-6-2009.)

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, May 2009.

(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, May 2009.

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, May 2009, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 200 Fair Oaks, 2nd Floor, 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 www.waste.ky.gov. (35 Ky.R. 1954; 2737; eff. 7-6-2009.)

401 KAR 101:040. Cleanup and sampling requirements.

RELATES TO: KRS 224.01-400, 224.01-410, 40 C.F.R. 260.11, EO 2008-507, 2008-531

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.01-410(3) authorizes the cabinet to promulgate administrative regulations providing for decontamination standards for 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 cleanup requirements for methamphetamine contaminated properties.

Section 1. Applicability. (1) This administrative regulation applies to an owner of a property where a notice of methamphetamine contamination has been placed.

(2) An owner of a contaminated property shall not have the notice removed until the owner has complied with:

- (a) Section 2 of this administrative regulation for demolition;
- (b) Sections 3, 4, and 8 through 10 of this administrative regulation for a Tier 1 contaminated property;
- (c) Sections 3, 5, and 8 through 10 of this administrative regulation for a Tier 2 contaminated property;
- (d) Sections 3, 6, and 8 through 10 of this administrative regulation for a Tier 3 contaminated property; or
- (e) Sections 3 and 7 through 10 of this administrative regulation for a Tier 4 contaminated property.

Section 2. Demolition Requirements. (1) An owner of contaminated property may choose to demolish the property instead of meeting the decontamination standards of this administrative regulation.

(2) An owner shall notify the cabinet, in writing, of the intent to demolish a contaminated property at least ten (10) days before the demolition activities begin.

(3)(a) An owner shall not be required to hire a certified contractor for the purposes of demolition of a contaminated property.

(b) Within sixty (60) days of demolition, the owner shall submit to the cabinet, the Owner's Certificate of Demolition (OCD), DEP 6085, May 2009, with the following:

- 1. Predemolition photographs;
- 2. Postdemolition photographs; and
- 3. Waste disposal receipts.

(c) An owner shall render all furnishings unusable prior to disposal.

(d) All solid waste generated during demolition activities shall be disposed of at a permitted solid waste contained landfill.

(4) An owner shall comply with all applicable federal, state, and local regulations regarding demolition of a property.

(5) The cabinet shall review an Owner's Certificate of Demolition (OCD) upon receipt.

(a) If the cabinet determines the OCD form is complete, a release letter for the contaminated property shall be issued to the owner, local health department, the Department for Public Health, and the Kentucky State Police; or

(b) If the cabinet determines the OCD form is not complete, the cabinet shall notify the owner, in writing, of the deficiencies.

Section 3. General Cleanup Requirements. (1) The requirements of this section shall be performed by a certified contractor.

(2) The following cleanup requirements shall be necessary for each tier of contaminated properties:

(a)1. The certified contractor shall conduct a Preliminary Assessment of the property and all structures on the property.

2. Information to be collected and activities to be conducted shall include:

a. A copy of the Clandestine Drug Lab Preliminary Assessment Tier Selection Criteria, DEP 1016, May 2009, for the property, available by open records request to the cabinet;

b. Conduct air monitoring inside the structure for the presence of volatile compounds with a photoionization detector (PID) or flame ionization detector (FID). Additional field instrumentation may be utilized to determine proper level of personal protective equipment (PPE); and

c. Conduct inspection of the dwelling, other structures on the property and surrounding land, with special attention given to:

- (i) Methamphetamine manufacturing areas;
- (ii) Hazardous chemical use, storage, or disposal areas;
- (iii) Fire damage;
- (iv) Etched fixtures in bathrooms and kitchen;
- (v) Heating, ventilation, and air conditioning systems (HVAC);
- (vi) Plumbing and septic system;
- (vii) Spills; and
- (viii) Stained areas;

(b)1. If suspicious items (for example containers with residues, tubing, odd containers of kitty litter or paraphernalia) are discovered that are apparently related to methamphetamine manufacturing, a contractor shall contact Kentucky State Police or local law enforcement immediately.

2. If law enforcement personnel do not remove these items, they shall be containerized, properly disposed, and the disposal shall be documented;

(c) Law enforcement officials shall be contacted if firearms or bulk hazardous substances are encountered during cleanup;

(d) Using a container made of puncture-resistant plastic, carefully segregate and properly dispose of any hypodermic needles found on the property; and

(e) Prior to the cleanup response, remove all ancillary volatile and semi-volatile chemical sources

that may be located on the property.

(3) After completion of cleanup, confirmation samples shall be collected in accordance with procedures in Sections 9 and 10 of this administrative regulation to determine if the property meets the decontamination standard as established in Section 11 of this administrative regulation.

(4) The following documentation shall be completed and submitted with the Contractor's Certificate of Decontamination (CCD), DEP 5035, May 2009, to the cabinet within sixty (60) days of completion of cleanup activities:

(a) A site map drawn to scale depicting:

1. The property and its layout, including identification of other structures on the property and location of all potential areas of contamination observed during preliminary assessment;
2. The property's location relative to streets and surrounding properties; and
3. Streams and drainage features located near or adjacent to the property;

(b) Sketches of each room and each floor of the property depicting the:

1. Areas of observed contamination;
2. Location of appliances;
3. Kitchen and bathroom fixtures;
4. Locations of postdecontamination samples; and

(c) Photographs shall be taken of conditions before and after decontamination and of all postdecontamination sample locations in order to provide documentation of the cleanup.

Section 4. Tier 1 Response. (1) The cleanup requirements of this section shall be performed by a certified contractor.

(2) In addition to the general cleanup requirements in Section 3 of this administrative regulation, a cleanup for a Tier 1 Response shall include, at a minimum, the following:

(a) Ventilate the property for a minimum of forty-eight (48) hours prior to cleanup;

(b)1. Replace air filters in the HVAC system.

2. The HVAC shall not be turned on until the property has been decontaminated;

(c) Target areas of a minor spill for cleanup;

(d) Wash all hard surfaces with hot water and cleansers. This includes:

1. Appliances;
2. Floors;
3. Walls;
4. Ceilings;
5. Countertops;
6. Cabinets; and
7. Bathroom fixtures;

(e) Shampoo rugs;

(f) Steam clean mattresses and cloth furniture;

(g) Have bed linens and drapes laundered;

(h) Using photo documentation as proof, remove all clothing, children's toys, or other absorbent items left behind; render them unusable; and properly dispose of them; and

(i) Thoroughly clean surfaces that may collect dust.

(3) All contaminated properties shall require at least a Tier 1 cleanup response.

Section 5. Tier 2 Response. (1) The cleanup requirements of this section shall be performed by a certified contractor.

(2) In addition to the general cleanup requirements in Section 3 of this administrative regulation, a cleanup for a Tier 2 Response shall include, at a minimum, the following:

(a) Ventilate property for a minimum of seventy-two (72) hours;

(b) Target areas of a spill for cleanup;

(c) Wash all hard surfaces with hot water and cleansers, including:

1. Appliances;
2. Floors;
3. Walls;
4. Ceilings;
5. Countertops;
6. Cabinets; and
7. Kitchen and bathroom fixtures;

(d) Using photo documentation as proof, remove all clothing, children's toys, or other absorbent items left behind; render them unusable; and properly dispose of them;

(e) Thoroughly clean surfaces that may collect dust;

(f) Etched, stained, or contaminated appliances and fixtures, to the point that successful cleaning is in doubt, shall be rendered unusable and removed;

(g) All stained surfaces and contaminated items shall be rendered unusable, removed, and disposed of at a permitted solid waste contained landfill;

(h) Submit all disposal receipts with the CCD;

(i) All nonstained hard surfaces shall be double-washed with hot water and cleaners;

(j) All washed hard surfaces shall be painted or sealed; and

(k)1. Replace air filters in the HVAC and clean ventilation duct works.

2. The HVAC shall not be turned on until the property has been decontaminated.

Section 6. Tier 3 Response. (1) The cleanup requirements of this section shall be performed by a certified contractor.

(2) In addition to the General Cleanup Requirements established in Section 3 of this administrative regulation, a cleanup for a Tier 3 Response shall include, at a minimum, the following:

- (a) Ventilate property for a minimum of five (5) days;
- (b) Using photo documentation as proof, remove all clothing, children's toys, or other absorbent items left behind; render them unusable; and properly dispose of them;
- (c) Thoroughly clean surfaces that may collect dust;
- (d) Etched, stained, or contaminated appliances and fixtures shall be rendered unusable and removed;
- (e) Absorbent surfaces and materials shall be rendered unusable and removed;
- (f) All stained surfaces and contaminated items shall be rendered unusable, removed, and disposed at a permitted solid waste contained landfill;
- (g) Submit all disposal receipts with the CCD;
- (h) All nonstained hard surfaces shall be double-washed with hot water and cleaners;
- (i) All washed hard surfaces shall be painted or sealed;
- (j) 1. Replace air filters in the HVAC, and clean ventilation duct works.
- 2. The HVAC shall not be turned on until the property has been decontaminated;
- (k) If there is an on-site septic system, access the septic tank, and screen the septic tank for VCs by using a PID and test the pH of the liquid in the tank.
 - 1. If the VC and pH readings are indicative of impacts from methamphetamine lab waste, collect a sludge sample and follow the procedures and standards per 401 KAR 31:030 to determine if the waste is hazardous.
 - 2.a. If it is determined that the waste is hazardous, pump septic system and dispose of sludge at a hazardous waste facility based on the waste characterization sample analyses.
 - b. The contractor shall keep all disposal receipts or manifests;
 - (l) 1. Clean or remove contaminated subfloor or other framing materials prior to reconstruction.
 - 2. Structural members of the building that would compromise structural integrity if removed, shall not be removed;
 - (m) All surfaces, not replaced, shall meet the decontamination standard after cleanup and painting or sealing; and
 - (n) Removed items shall be disposed at a permitted solid waste contained landfill and documented with copies of disposal receipts.

Section 7. Tier 4 Response. (1) Law enforcement agencies shall consult with the cabinet prior to making this Cleanup Tier Recommendation.

(2)(a) A large amount of contamination inside the structure may render its cleanup uneconomical, and demolition may be the most cost-effective option.

(b) The owner shall submit documentation of the property being demolished, including the OCD and disposal receipts, to the cabinet, as established in Section 1 of this administrative regulation.

Section 8. Releases to the environment. If releases of hazardous substances, pollutants, or contaminants to the environment are documented either through observations of, for example, open dumping, presence of burn pits, outside cooking areas, they shall be subject to the requirements of KRS 224.01-400 and 401 KAR 100:030.

Section 9. Methamphetamine Sampling Requirements. (1)(a) In accordance with the procedures in Appendix B.1 of Kentucky Cleanup Guidance for Methamphetamine Contaminated Properties, incorporated by reference in 401 KAR 101:010, each room and space in the contaminated property shall be wipe-sampled following decontamination activities to demonstrate compliance with the decontamination standards as established in Section 10 of this administrative regulation.

(b) Additional samples shall be collected in the following areas:

- 1. Suspected cooking locations;
- 2. Observed chemical spills; and
- 3. Waste storage areas identified during the Preliminary Assessment of the contaminated property.

(2) Table 1 lists the minimum number of composite samples that shall be completed for post-decontamination sampling for methamphetamine.

(a) All samples shall be collected from cleaned surfaces and not new materials.

(b) If a wall or material identified below is removed and replaced as part of the decontamination, the contractor shall designate another location for sampling and document in the Contractor's Certificate of Decontamination, DEP 5035, May 2009.

Table 1 Postdecontamination Sampling Protocols

Area	Sampling Protocol
Each Room	Four 10cm x 10cm samples for total of 400 sq. cm consisting of: - 1 sample from location at or near center of floor*

	- 1 sample from location at or near center of ceiling -1 sample from location at or near center of 2 walls (samples may make up one composite sample for each room) + the following samples
Kitchen	Four 10cm x 10cm samples for total of 400 sq. cm consisting of: - 1 sample from countertop - 1 sample from stovetop - 1 range hood above stovetop, if present; if not present, from a cabinet above the stovetop - 1 floor in front of the stovetop (samples may make up 1 composite sample)
Bathroom(s)	Four 10cm x 10cm samples for total of 400 sq. cm consisting of: - 1 sample from countertop - 1 sample from sink - 1 sample from toilet - 1 sample from shower or bathtub (samples may make up 1 composite sample)
HVAC System	Four 10cm x 10cm samples for total of 400 sq. cm at 4 different locations in the ventilation system Sample cold air returns or plenums (samples may make up 1 composite sample)
Appliances (Cleaned)	One 10cm x 10cm sample from exposed surface of each cleaned appliance; if multiple appliances are present, up to 4 wipes may be combined into 1 composite sample representing 400 sq. cm

* If the flooring is carpeting that has only been cleaned and not removed, the floor sample may be taken from the lowest point on one (1) wall nearest the cooking area, or just above the baseboard in non-cooking rooms.

(3)(a) To confirm cleanup of the property, all samples collected and analyzed shall be below the decontamination standard of 0.1µg/100cm² as established in Section 11 of this administrative regulation.

(b) In addition to the samples noted in Table 1, the certified contractor shall also collect quality assurance and quality control wipe samples and field blanks in accordance with standard sampling and analytical practices as established in 40 C.F.R. 260.11.

(c) The contractor shall do the following:

1. Log all samples collected at the site and QA/QC samples on a chain of custody form;
2. Maintain proper temperature as established in U.S. EPA SW-846, incorporated by reference in 40 C.F.R. 260.11; and
3. Maintain records of sample shipment to the laboratory.

Section 10. Analytical Laboratory Requirements. (1) Certified contractors shall use a U.S. EPA or other nationally-accredited analytical laboratory to ensure that all analytical data shall be reliable and reproducible.

(2)(a) For methamphetamine analyses, the laboratory shall utilize Method 8270C-Modified, "Semi-volatile Organic Compounds by Liquid Chromatography or Gas Chromatography/Mass Spectroscopy", from "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", U.S. EPA SW-846, Third Edition (Nov. 1986), Revision 3 (Dec. 1996), or other accredited laboratory methods to achieve a detection limit of at least 0.1µg/100cm², and include all quality assurance and quality control documentation required by the method.

(b) For all other waste or chemical analyses requiring an off-site environmental laboratory, U.S. EPA SW-846, 40 C.F.R. 260.11, methods shall be utilized.

(c) The certified contractor shall ensure that the laboratory used shall be an accredited laboratory capable of performing the required analyses.

Section 11. Cleanup Standards.

	Decontamination Standard
Methamphetamine	0.1 µg/ 100 cm ² (all surface materials)

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Owner's Certificate of Demolition", DEP 6085, May 2009; and
- (b) "Contractor's Certificate of Decontamination (CCD)", DEP 5035, May 2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 200 Fair Oaks, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the division's Web site at www.waste.ky.gov. (35

