

UNDERGROUND STORAGE TANK CLEANUP PROGRAM REVISIONS

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House Bill 5599 as enacted
Public Act 380 of 2016
Sponsor: Rep. Andrea LaFontaine
House Committee: Natural Resources
Senate Committee: Natural Resources
Complete to 1-25-17

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 5599 would amend several sections of Part 215 of the Natural Resources and Environmental Protection Act (NREPA). Part 215 of NREPA addresses funding for corrective actions due to releases from underground storage tanks. The bill amends provisions related to the claims process for underground storage tank cleanup. The new act takes effect on March 22, 2017. A more detailed summary follows.

House Bill 5599

Definitions

House Bill 5599 would amend the definition of the term claims limit. The current definition of that term is: "\$1 million for all claims of owners or operators and their affiliates during a claim period for owners and operators of 1 to 100 refined petroleum underground storage tanks, or \$2 million for all claims of owners or operators and their affiliates during a claim period for owners or operators of more than 100 refined petroleum underground storage tanks."

The bill would change the definition to: \$1 million per release, and would say that "two or more claims arising out of the same, interrelated, associated, repeated, or continuous releases or a series of related releases shall be subject to one claims limit. Any claim that takes place over two or more claim periods shall be subject to one claims limit."

The bill would add the term claim period aggregate limit, which would mean "the following aggregate claims limit for all releases discovered during a claim period:

- For owners, operators, and affiliates of 1 to 100 refined petroleum underground storage tanks, \$1 million.
- For owners, operators, and affiliates of more than 100 refined petroleum underground storage tanks, \$2 million."

The term deductible amount would be amended by striking out language stating that the deductible must be paid before the owner or operator is eligible to submit a claim under Part 215. The bill would make other complementary changes regarding prepayment of the deductible prior to being eligible to receive money from the Underground Storage Tank Authority (USTA).

Also added by House Bill 5599 is the term "work invoice," which would mean "a list of goods or services for costs of corrective action related to a claim, including a statement of the amount due."

Precollection of fees

The act imposes an environmental protection regulatory fee on all refined petroleum products sold for resale or for consumption. The Department of Treasury must precollect these fees from refiners or importers of refined petroleum. The act says the department must collect regulatory fees that can be collected at the same time as the sales tax. The bill would strike the underlined language.

Eligibility for receiving Underground Storage Tank Authority funds

House Bill 5599 would make several amendments to the criteria that must be met by a person prior to receiving money from USTA. The act says the owner/operator of the underground refined petroleum storage tank from which the release occurred must be, at the time of the discovery of the release, in compliance with registration and fee requirements of Part 211 and rules promulgated under that part. The bill would remove the underlined language. Also removed is a requirement that the owner or operator have paid the deductible amount.

Claim deductibles

Section 21510a contains two deductible amounts. If the owner or operator or its affiliate owns or operates fewer than eight refined petroleum underground storage tanks and pays an annual \$500 fee, then the deductible is \$15,000 per claim. Otherwise, it is \$50,000 per claim.

The bill would add language specifying that for the \$15,000 deductible to apply, the owner or operator must have paid the annual fee per refined petroleum tank prior to the discovery and reporting of the release for which any subsequent claim is filed.

Reasons for non-approval of claim

Section 21510c of NREPA describes when a claim cannot be approved by USTA. The bill would add that a claim cannot be approved for:

- Costs that have been or will be submitted to, or that have been paid under an insurance policy or policies.
- Costs arising from corrective actions performed in excess of the corrective actions required to obtain a restricted closure based on then current land use.

Intent to use fund for financial responsibility requirements

The bill would create a new Section 21510D, which would add language stating that if an owner or operator intends to rely on the Underground Storage Tank Cleanup Fund to meet financial responsibility requirements, then that owner or operator must submit a request to the authority for a determination that they would be eligible for funding under Part 215 in the event of a release from a refined petroleum underground storage tank system.

Upon receipt of such a request, the authority would be required to make a determination and provide notice of that determination, in writing, to the owner or operator. The notice may contain conditions for maintenance of that eligibility. A determination under this section would be based upon a demonstration of all of the following:

- The owner or operator is not ineligible for funding, for reasons cited in the bill.
- The refined petroleum underground storage tank or tanks are presently in compliance with the registration and fee requirements of Part 211.
- The owner or operator is not the United States government.
- The owner or operator has financial responsibility for the deductible amount.

Receiving money from USTA

House Bill 5599 would modify the process for receiving money from the authority by requiring an owner or operator, once notice from the administrator is received that its claim has been approved, to submit work invoices to the administrator containing required information. Within 45 days of receipt of the work invoices, the administrator would then make determinations relating to the claim. As part of the administrator's determinations, the bill would require that the cost of the corrective work be based on a competitive bidding process as established by USTA. Work invoices related to a claim could be submitted only after the initial approval and if the aggregate amount of work invoices in the submission is \$5,000 or more. However, this limit would not apply to the final work invoice submission related to the approved claim.

The bill would modify the payout of monies by making it a joint payment to both the owner or operator and the contractor that performed the work listed in the approved work notice. The joint payment would have to be made within 45 days after the date of the administrator's approval if sufficient money exists in the fund. Currently, payment is made to the owner or operator within 30 days.

Board of directors

The bill would strike language that authorizes the board of directors of the authority to invest money of the authority at the board of directors' discretion, in instruments, obligations, securities, or property determined proper by the board of directors, and to name and use depositories for its money.

FISCAL IMPACT:

House Bill 5599 would not affect costs or revenues for the Department of Environmental Quality (DEQ). The current environmental protection regulatory fee charged on the sale of refined petroleum product in Michigan generates approximately \$50.0 million in annual revenue. The first \$20.0 million of this annual revenue is deposited into the underground storage tank cleanup fund (USTCF), and the remaining revenue (approximately \$30.0 million) is deposited into the Refined Petroleum Fund (RPF). The current environmental protection fee and the distribution of fee revenue is established in Section 21508 of NREPA. House Bill 5599 does not amend Section 21508 and annual fee revenue and distribution are unlikely to be affected by House Bill 5599.

[A separate package of bills dealing with UST regulation, permit fees, and environmental regulatory fees was passed during the 2015-2016 Legislative Session. See House Fiscal Agency analysis of House Bill 1051. <http://legislature.mi.gov/doc.aspx?2016-SB-1053>]

Both the USTCF and the RPF support the remediation of leaking underground storage tanks. The USTCF is used to reimburse underground storage tank owners and operators for qualifying cleanup actions; this bill would adjust the reimbursement application process.

The bill specifies that each individual claim by an owner or operator is subject to a \$1.0 million reimbursement limit minus the corresponding deductible. The bill also specifies a claim period aggregate limit in which all claims of an owner or operator discovered during a claim period are subject to a \$1.0 million (for 1 to 100 underground storage tanks) or \$2.0 million (for more than 100 underground storage tanks) aggregate limit. The department does not anticipate that the process changes included in House Bill 5599 will result in an increase in the number of claims nor an increase in costs to the fund.

The bill lowers the deductible paid by owners or operators seeking reimbursement for qualifying cleanup or remediation actions. The department anticipates that this change could lead to increased expenditures from the USTCF since more releases would subsequently meet the new spending threshold thereby qualifying them for reimbursement. Also, a larger portion of claim costs would be eligible for reimbursement. There is no estimated amount for this increase in cost to the fund.

House Bill 5599 would not affect costs or revenues for local units of government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.