



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 5599 (as passed by the House)
Sponsor: Representative Andrea LaFontaine
House Committee: Natural Resources
Senate Committee: Natural Resources

Date Completed: 10-18-16

CONTENT

The bill would amend Part 215 (Underground Storage Tank (UST) Corrective Action Funding) to do the following regarding payments from the Michigan Underground Storage Tank Authority (MUSTA) for corrective action or indemnification due to a release from a refined petroleum underground storage tank (UST):

- **Establish a MUSTA reimbursement claims limit of \$1.0 million per release, and a claim period aggregate limit of \$1.0 million or \$2.0 million, depending on the number of USTs a person owned or operated.**
- **Eliminate requirements that a UST owner or operator pay a deductible amount in order to be eligible for reimbursement and pay the deductible before submitting a reimbursement claim (but retain a requirement for payment of a deductible).**
- **Provide that an optional \$500 annual fee paid by an owner or operator in exchange for a lower deductible in the event of a UST release would have to be paid before the discovery and reporting of a release.**
- **Prohibit MUSTA from approving reimbursement for claims costs that were paid under an insurance policy, as well as costs arising from corrective actions performed in excess of those required to obtain a restricted closure based on then-current land use.**
- **Require a UST owner or operator who intended to rely on the UST Cleanup Fund to meet financial responsibility requirements to submit to MUSTA a request for a determination of eligibility for the funding in the event of a release from a refined petroleum UST system.**
- **Delete a prohibition against the submission of a claim to MUSTA until work invoices exceeding the deductible amount have been incurred.**
- **Require the MUSTA Administrator to determine whether the cost of a claim was based upon a competitive bidding process established by the Authority.**
- **Allow an owner or operator to submit to the MUSTA Administrator work invoices that were related to a claim only after initial approval of the claim, and if the aggregate amount of invoices in the submission were at least \$5,000.**
- **Require, rather than allow, the Administrator to approve a reimbursement for a submitted work invoice meeting the applicable requirements for an approved claim and an approved invoice.**
- **Extend from 30 to 45 days the time period in which MUSTA must make a payment for an approved claim.**
- **Include the contractor that performed the work listed in approved invoices among those to whom MUSTA must make a payment for an approved claim.**
- **Extend provisions regarding the review of a MUSTA decision to a determination of eligibility for reimbursement.**

The bill also would eliminate a requirement that the Department of Treasury collect environmental protection regulatory fees on certain fuel purchases at the same time the sales tax is collected.

The bill would take effect 90 days after enactment.

Collection of Environmental Protection Regulatory Fees

Part 215 imposes an environmental protection regulatory fee of 7/8 cent per gallon on all refined petroleum products sold for resale or consumption in Michigan. The fee is charged for capacity use of refined petroleum USTs measured on a per-gallon basis. The Department of Treasury must precollect the fees from people who refine petroleum in Michigan for resale or consumption in the State. The Department must collect regulatory fees that can be collected at the same time as the sales tax under Section 6a of the General Sales Tax Act (which requires a purchaser or receiver of fuel to prepay a portion of the sales tax on the purchase), and collect the remainder in the manner determined by the State Treasurer. The bill would eliminate the reference to the sales tax and instead require the Department to collect all environmental protection regulatory fees in the manner determined by the State Treasurer.

(Of the fees collected each State fiscal year, the first \$20.0 million is deposited in the UST Cleanup Fund, and the remainder is deposited in the Refined Petroleum Fund (RPF). The UST Cleanup Fund is used to pay principal and interest due on bonds or notes issued by the Michigan Finance Authority under Part 215, as well as any amount necessary to maintain a fully funded debt reserve or other necessary reserve; and the reasonable administrative cost of implementing Part 215 incurred by the Department of Environmental Quality (DEQ), the Department of Treasury, the Department of Attorney General, and the Michigan Finance Authority.

The RPF is used for the following purposes:

- Corrective actions performed by the DEQ under Part 213 (Leaking USTs).
- The DEQ's reasonable costs in administering the RPF and implementing Part 213.
- Gasoline inspection programs.
- Other purposes as determined by the Legislature.)

Michigan Underground Storage Tank Authority Money

An owner or operator is eligible to receive money from MUSTA for corrective action or indemnification due to a release from a refined petroleum UST system only if the release was discovered and reported on or after December 30, 2014, and other conditions are met. These conditions include a requirement that the UST from which the release occurred was, at the time of the release's discovery, and is presently, in compliance with the registration and fee requirements of Part 211 (UST Regulations) and the rules promulgated under that part. The bill would delete the reference to the rules.

The bill also would delete a requirement that the owner or operator pay the deductible amount (described below) in order to be eligible for MUSTA money.

Another condition of eligibility is that the total amount of expenditures, including the deductible amount, does not exceed the claims limit. The claims limit is as follows:

- For owners and operators of one to 100 USTs, \$1.0 million for all claims of owners or operators and their affiliates during the claim period.
- For owners and operators of more than 100 USTs, \$2.0 million for all claims of owners or operators and their affiliates during the claim period.

(The claim period is a one-year period beginning on October 1 of each year and ending on September 30 the following year.)

The bill would delete these limits. Instead, the claims limit would be \$1.0 million per release. Two or more claims arising out of the same, interrelated, associated, repeated, or continuous releases or a series of related releases would be subject to one claims limit, as would any claim that took place over two or more claim periods.

Additionally, for an owner or operator to be eligible for MUSTA funds, the total amount of expenditures, including the deductible amount, could not exceed the claim period aggregate limit applicable to the claim. "Claim period aggregate limit" would mean the following aggregate claims limit for all releases discovered during a claim period:

- For owners, operators, and affiliates of one to 100 USTs, \$1.0 million.
- For owners, operators, and affiliates of more than 100 USTs, \$2.0 million.

Under Part 215, an owner or operator may submit to MUSTA a request for a determination that the owner or operator would be eligible for funding in the event of a release from a refined petroleum UST system. Upon receiving a request, MUSTA make a determination and notify the owner or operator in writing. The notice may contain conditions for maintenance of eligibility. The bill would delete these provisions.

Under the bill, an owner or operator who sought to receive MUSTA money for corrective action would have to submit to the MUSTA Administrator the Cleanup Fund claim submittal form created by the Authority containing the information required by the Administrator to determine compliance with Part 215. The Administrator would have to determine whether the claim complied and notify the owner or operator. The Administrator could consult with the Department of Licensing and Regulatory Affairs to make this determination.

Deductible

Before submitting a claim for MUSTA money, an owner or operator is responsible for a deductible amount. As a rule, the deductible amount is \$50,000 per claim; however, if the owner or operator or its affiliate owns or operates fewer than eight refined petroleum USTs and pays MUSTA an annual fee of \$500 per UST, the deductible is \$15,000 per claim. The bill would eliminate the requirement that the owner or operator pay the deductible before submitting the claim. Additionally, for the \$15,000 per claim deductible to be in effect, the owner or operator would have to pay the \$500 annual fee before the discovery and reporting of the release for which any subsequent claim was filed.

Currently, an owner or operator who submits a claim to MUSTA for money for corrective action must include work invoices or other evidence that the required deductible amount has been met. The bill would delete this provision, and instead provides that an owner or operator who submitted a work invoice would be responsible for the deductible. "Work invoice" would mean a list of goods or services for costs of corrective action related to a claim, including a statement of the amount due.

Rejected Claim

Part 215 prohibits MUSTA from approving certain claims, such as a claim for a release that was expected or intended by an owner or operator or a release resulting from the owner's or operator's intentional, knowing, willful, or deliberate noncompliance with an applicable statute or regulation. The bill also would prohibit the payment of a claim for costs that had been or would be submitted to or that had been paid pursuant to an insurance policy or policies, and costs arising from corrective actions performed in excess of those required to obtain a restricted closure based on then-current land use.

Financial Responsibility Requirements

Under the bill, if an owner or operator intended to rely on the UST Cleanup Fund to meet financial responsibility requirements, the owner or operator would have to submit to the Authority a request for a determination that the owner or operator would be eligible for funding under Part 215 in the event of a release from a refined petroleum UST system. Upon receiving a request, the Authority would have to make a determination and notify the owner or operator in writing. The notice could contain conditions for maintenance of that eligibility. A determination would have to be based upon a demonstration of all of the following:

- That the owner or operator was not ineligible for funding under Section 21510(4) and (5) (described below).
- That the UST or USTs presently were in compliance with the registration and fee requirements of Part 211.
- That the owner or operator was not the United States government.
- That the owner or operator had financial responsibility for the deductible amount.

(Under Section 21510(4), an owner or operator that is a public utility with more than 500,000 Michigan customers is ineligible to receive money from MUSTA for corrective action or indemnification associated with a release from a refined petroleum UST system used to supply refined petroleum for the generation of steam electricity. Under Section 21510(5), an owner or operator who has received MUSTA money for a release at a particular location is not eligible to receive MUSTA money for a subsequent release at the same location unless the owner or operator has taken certain actions.)

Submission of Work Invoices & Approval of Claims

To receive MUSTA money for corrective action, an owner or operator must follow prescribed procedures and submit to the MUSTA Administrator a claim containing information relevant to determining compliance with Part 215. Under the bill, this provision would apply to an owner or operator who received notice from the Administrator that its claim had been approved. Also, the bill would require the owner or operator to submit work invoices, rather than a claim, to show compliance with Part 215.

Part 215 prohibits an owner or operator from submitting a claim to MUSTA until work invoices in excess of the deductible amount have been incurred. The bill would delete this prohibition.

Upon receiving a completed claim, the MUSTA Administrator must determine all of the following:

- Whether the owner or operator is eligible to receive funding under Part 215.
- Whether the work performed or proposed is consistent with Part 213 (Leaking USTs) and whether those activities are consistent with achieving site closure.
- Whether the owner or operator has paid the deductible amount.
- Whether the corrective action performed is reasonable and necessary considering conditions at the site of the release.
- Whether the cost of performing the corrective action work is at or below the allowable reimbursement amount in the schedule of costs or, if the work is not a listed item, whether the cost is reasonable and necessary.

Under the bill, the Administrator also would have to determine whether the cost was based upon a competitive bidding process established by the Authority. Additionally, the bill would require the Administrator to make all of these determinations within 45 days of receiving the work invoices.

Part 215 allows an owner or operator to submit additional work invoices to the Administrator after initial approval of a claim. Within 45 days after receiving such an invoice, the Administrator must determine whether it complies with the same conditions that apply to the original claim, and whether the owner or operator currently is in compliance with the regulation and fee requirements of Part 211 and the rules promulgated under that part for the refined petroleum UST system from which the release occurred. The bill would delete these provisions. Instead, the owner or operator could submit to the Administrator work invoices that were related to a claim only after initial approval of the claim, and if the aggregate amount of invoices in the submission were at least \$5,000. This limitation would not apply to the final work invoice submission related to the approved claim.

The bill would delete provisions requiring the Administrator to keep records of approved work invoices.

The bill would require, rather than allow, the Administrator to approve a reimbursement for a submitted work invoice that meets the requirements of Part 215 for an approved claim and an approved invoice.

MUSTA Reimbursement

Except as otherwise provided, the MUSTA must make a payment to an owner or operator within 30 days if sufficient money exists in the UST Cleanup Fund. The bill would change the time frame to 45 days after the date of the Administrator's approval, and would require MUSTA to make a joint payment to the owner or operator and the contractor that performed the work listed in the approved invoices.

Review of Eligibility Determination

If the Administrator denies a claim, work invoice, or request for indemnification, the owner or operator, within 14 days after the denial, may request review by the MUSTA board of directors. If the Administrator believes the dispute may be resolved without the board's review, he or she may first contact the owner or operator regarding the issues in dispute and negotiate a resolution. The board must conduct a review of a denial to determine whether the claim, work invoice, or request for indemnification is payable under Part 215. A person who is denied approval after review may appeal the decision directly to the circuit court. Under the bill, all of these provisions also would apply if the Administrator denied a request for a determination of eligibility to receive MUSTA funding.

Investments

The bill would delete a provision authorizing the MUSTA board of directors to invest the Authority's money in instruments, obligations, securities, or property, and to name and use depositories for its money.

MCL 324.21502 et al.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Josh Sefton

S1516\5599sa

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.