

Michigan Underground Storage Tank Authority



Underground Storage Tank Cleanup Fund

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Presentation to Michigan Petroleum Association/Michigan Association
of Convenience Stores Spring Convention & Trade Show

www.michigan.gov/deqmusta

Michigan Underground Storage Tank Authority

- MUSTA was created on December 30, 2014 by amendments to Part 215 to oversee the implementation of the Underground Storage Tank Cleanup Fund (created as part of the same amendments)
- Governed by a Board of Directors (Board)

The Board...

Consists of the Director of the DEQ and individuals representing:

- Petroleum refiners
- Independent petroleum marketers
- A statewide motor fuel retail association
- A statewide business association that includes owners or operators of refined petroleum USTs
- A statewide environmental organization
- The general public

The Underground Storage Tank Cleanup Fund

Funding Sources:

- The First \$20 million of the environmental protection regulatory fee (7/8 cent/gallon) collected each fiscal year
- Fees paid to buy-down deductible amounts
- Interest earned on the Fund balance

The Underground Storage Tank Cleanup Fund....

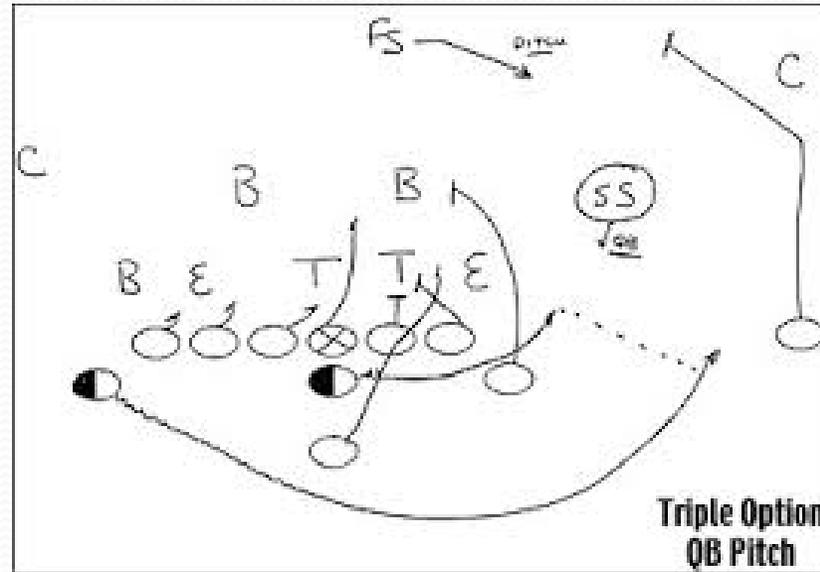
Uses:

- To pay principal and interest due on bonds or notes
- For administrative costs not to exceed 7% of the Fund's projected revenues in any year
- To pay approved claims and requests for indemnification

Main Purposes of the Fund

- To provide an additional financial responsibility mechanism for petroleum UST owners and operators
- To provide reimbursement for eligible corrective action expenses

Options



Deductible Amounts & Buy-Downs

- The per claim deductible amount is \$50,000
- Owners and operators and their affiliates who own 7 or fewer refined petroleum USTS may buy-down their deductible down to \$15,000 per claim by paying a \$500/UST/year fee (each compartment is considered a separate UST)
- Deductible buy-downs are accepted between November 1st and December 31st annually and are good for the following calendar year

Deductible Amounts & Buy-Downs

- For new owners or newly discovered USTs 14 days is allowed to submit deductible buy-downs for the remainder of the calendar year
- Buy-down fees are non-refundable and buy-downs for partial years will not be prorated
- **An owner or operator does not have to be using the fund as their means for FR in order to buy-down their claim deductible**

Using the Fund as a Financial Responsibility Mechanism

- **Is optional and not required in order to file a claim**
- Requires:
 - § Submission of proof of FR for the deductible amount
 - § Submission and approval of a Request for Determination of Eligibility

Providing Proof of FR for the Deductible

- Required for the appropriate deductible amount prior to the expiration of any prior submittals of proof of FR
- Must be submitted with Documentation of Financial Responsibility Submittal Form

Providing Proof of FR for the Deductible

– Eligible Mechanisms:

- § Financial test of self insurance
- § Guarantee
- § Insurance and risk retention group coverage
- § Surety bond
- § Letter of credit Trust fund
- § Standby trust
- § Other methods for local units of government

Requests for Determination of Eligibility

- Required if the owner or operator intends to use the Fund as their FR mechanism
- **Do not have to be renewed annually.** They are good as long as the owner or operator maintains their eligibility
- **Not required for future submittal of a claim**

Requests for Determination of Eligibility

– Eligibility Requirements:

- § Compliance with the Part 211 UST registration and fee requirements
- § The owner or operator is not the U.S. Government
- § Maintaining financial responsibility for the deductible amount
- § The owner or operator is not ineligible under Sections 21510(4) or 21510(5)

Requests for Determination of Eligibility

- The Department of Licensing and Regulatory Affairs, Bureau of Fire Services is copied on the approvals. The owner or operator should also maintain a copy of their approval letter
- If at any time it is discovered that the facility is out of compliance, LARA will be notified and the owner or operator will be required to seek a separate means of financial responsibility

Using the Fund for Corrective Action Expenses

Reimbursement Limits

- The maximum amount of eligible expenses that will be reimbursed for a single claim is \$1 million minus the appropriate deductible amount
- The claim period aggregate limit for O/O and affiliated with up to 100 USTs is \$1 million for all claims based on releases discovered during a claim period
- The claim period aggregate limit for O/O and affiliates with more than 100 USTs is \$2 million for all claims based on releases discovered during a claim period

Reimbursement Limits

- A claim period runs from October 1st of each year through September 30th of the following year
- The aggregate limits are applied based on the claim year when the releases are discovered regardless of when the claim is filed, work performed, or invoices submitted

Claim Eligibility Requirements

- Release discovered and reported on or after December 30, 2014
- Release reported within 24 hours of its discovery
- Compliance with the UST registration and fee requirements of Part 211
- Maintenance of financial responsibility for the deductible amount
- Others defined in Part 215
- **An O/O is not required to have submitted a Request for Determination of Eligibility to submit a claim**

Submitting a Claim

- Must be submitted on an Underground Storage Tank Cleanup Fund Claim Submittal Form
- Must include proof of FR for the deductible amount both at the time of the discovery and reporting of the release ***and*** at the time the claim is submitted
- Work invoices should *not* be provided with a claim submittal

Submitting Work Invoices

- Must be submitted with an Underground Storage Tank Cleanup Fund Invoice Submittal Form
- Must include appropriate backup documentation
- Must be for at least \$5,000 (except for the last invoice)

Cost Controls

- Schedule of Costs – to be updated annually
- Competitive Bidding Requirements
- List of Ineligible Costs

Available at www.michigan.gov/deqmusta

Cost Controls

Schedule of Costs

- Consultant's hourly rates
- Lab analysis
- Equipment and Supplies
- Direct Push
- Drilling of wells not exceeding 2 inches in diameter
- Limited source removal

Cost Controls

Competitive Bidding

- Excavation, transportation, and disposal of contaminated soils that is not performed as an initial response action.
- Removal and disposal of contaminated liquid (not tank contents) that is not performed as an initial response action.
- Purchase, construction, and decommissioning of treatment systems.
- Well abandonment
- Drilling services for wells exceeding 2 inches in diameter.
- Drilling in bedrock or unconsolidated soils greater than 60 feet below ground surface.
- Sonic Drilling.
- Ultra violet optical screening.
- Mobil laboratory services.

Cost Controls

Ineligible Expenses include....

- Litigation costs
- Costs associated with UST removals
- Installation of new UST systems
- Site restoration (unless directly associated with corrective actions)
- Costs of certain equipment purchases
- Fines, penalties, or punitive damages

Cost Controls

Ineligible Expenses include....

- Costs related to the excavation and disposal of more than 1,500 tons of contaminated soil unless the following conditions have been met:
 - § Alternative remediation techniques have been considered
 - § Excavation and disposal is shown to be the most cost-effective option
 - § The soil removal is part of a CAP approved or deemed approved by the Fund Administrator prior to the completion of the work.

MUSTA Processing of Work Invoices

- Within 45-days of receipt of an invoice the administrator shall determine whether the work performed is reasonable and necessary considering site conditions, consistent with Part 213, and consistent with achieving site closure.
- Cost controls will be used in adjusting work invoices

Payment of Work Invoices

- Invoices will be paid within 45 days of the determination made by the Fund Administrator
- Payments will be made **jointly** to the owner or operator and the consultant who performed the services

Review of Denials

- An O/O may request a review (Request) of a denied Request for Determination of Eligibility, claim, work invoice, or request for indemnification
- The Request must be made within 14 days of receipt of the denial
- Request should be sent to the MUSTA Administrator

Review of Denials

- The MUSTA Administrator may contact the O/O in an attempt to resolve the dispute prior to scheduling a review by the Board
- If the dispute can't be resolved, a hearing before the Board will be held and the Board will determine whether or not the submittal in dispute is approvable
- A person denied approval by the Board may appeal the decision directly to Circuit Court

Statistics to Date...

Document	Number
Deductible Buy-Downs	
Proof of FR for Deductible Amount	
Requests for Determination of Eligibility	
Claims	
Work Invoices	

Questions & Answers

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