



Guide to the Underground Storage Tank Cleanup Fund



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Michigan Department of Environmental Quality
Michigan Underground Storage Tank Authority

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Executive Summary

The Michigan Underground Storage Tank Authority (MUSTA) and the Underground Storage Tank Cleanup Fund (Fund) were created on December 30, 2014. The Fund was created to assist owners and operators (O/Os) of petroleum underground storage tank systems (USTs) in meeting their financial responsibility (FR) requirements, to fund corrective actions to address releases from USTs, and to help O/Os in achieving compliance with Part 213, Leaking Underground Storage Tanks of Act 451.

Use of the Fund to satisfy FR requirements is optional and there are steps that an O/O must take if they intend to use the Fund to meet their FR requirements and replace their commercial tank insurance.

The Fund may also be used to reimburse for costs related to cleaning up a site. Upon the discovery and reporting of certain releases from USTs, an O/O may file a claim and submit work invoices to reimburse them for costs that they have incurred while cleaning up the site of the release.

The processes for buying down deductible amounts, using the Fund for FR, filing claims, and submitting work invoices and other information are provided in this document.

The Michigan Underground Storage Tank Authority (MUSTA)

MUSTA was created to oversee the implementation of the Fund and is governed by a board of directors (Board) consisting of the Director of the Department of Environmental Quality (DEQ) and six residents of the state as appointed by the governor with the consent of the senate. The six members are as follows:

- An individual representing petroleum refiners.
- An individual representing independent petroleum marketers
- An individual from a statewide motor fuel retail association.
- An individual from a statewide business association that included owners or operators of refined petroleum USTs.
- An individual from a statewide environmental organization.
- A member of the general public.

In August 2015, the Board appointed the DEQ as the administrator of the Fund.

Fund Creation, Funding Mechanisms, and Uses

The Fund was created on December 30, 2014, by amendments to Part 215, Underground Storage Tank Corrective Action Funding of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended. It annually receives the first \$20 million that is collected from the environmental protection regulatory fee, which is a fee of 7/8 per cent per gallon for each gallon of refined petroleum sold for resale or

consumption in Michigan. The Fund also receives the monies that O/Os optionally pay to buy-down their deductible amounts as described later in this document and any interest that is received on the Fund balance.

The Fund may be used to pay principle and interest due on bonds or notes (which have not been issued to date and are not likely to be issued in the near future, if ever); to pay approved claims and requests for indemnification; and for the reasonable administrative cost of implementing the Fund, which shall not exceed 7% of the Fund's total revenue in any year.

Claim Deductible Amounts and Buying-Down the Deductible Amount

An O/O is responsible for a deductible amount of \$50,000 per claim, unless the deductible amount is bought-down. If an O/O or its affiliate owns or operates less than eight USTs, they may **optionally** buy-down their per claim deductible amount down from \$50,000 per claim to \$15,000 per claim. This may be done by submitting a Claim Deductible Buy-Down Application and a fee of \$500 per UST per year. For purposes of buying-down a deductible, each compartment of a multiple-compartment UST is considered a separate UST. This fee is separate from the \$100 per UST per year registration fee paid to the Department of Licensing and Regulatory Affairs, Bureau of Fire Services, Storage Tank Division (LARA).

Buy-down applications for calendar year 2017 must be submitted between January 1, 2017 and March 31, 2017 to cover claims based on releases discovered and reported during 2017. The only exceptions to the submittal dates are if a new O/O purchases a facility and/or if a new UST is discovered. In these instances, the Claim Deductible Buy-Down Application and appropriate fee must be submitted within 14 calendar days and will be in effect for the remainder of the calendar year. These fees will not be prorated for portions of a calendar year.

Claim Deductible Buy-Down Applications may be submitted to lower the claim deductible even if the O/O does not intend to use the Fund as their means of demonstrating FR as described later in this document.

Using the Fund as a Financial Responsibility Mechanism

The use of the Fund as a means to meet an O/O's federal and state FR requirement is **optional**. An O/O may choose to maintain a separate means of FR (such as private insurance) as opposed to using the Fund. **An O/O may file a claim (as described later in this document) even if they do not use the Fund as their means to meet the FR requirement.**

If an O/O chooses to use the Fund as their means of demonstrating FR for a facility or facilities, **they must submit documentation of FR for the appropriate deductible amount and submit a Request for Determination of Eligibility as described below:**

Submitting Documentation of Financial Responsibility for the Deductible Amount

An O/O may submit a [Documentation of Financial Responsibility Submittal Form](#) and proof of FR for the appropriate deductible amount (either \$50,000 or \$15,000 depending on whether or not they bought-down their deductible) to MUSTA. The proof of FR for \$50,000 or \$15,000 covers all facilities for which the O/O submits an application (i.e. an owner of 10 USTs would need to provide documentation of FR for \$50,000 not \$500,000). However, if claims are subsequently filed, the deductible is applied to each claim.

The O/O must utilize one of the following mechanisms to show proof of FR for the deductible amount:

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

The FR requirements are cited in Rule 61, Section 280.90, of the [Michigan Underground Storage Tank Rules \(MUSTR\)](#), 2008 AACCS, R 29.2161 et seq. An O/O may also contact MUSTA staff for FR mechanism templates and for review of draft templates. For local units of government allowable mechanisms, see MUSTR Sections 280.95 through 280.103 and Sections 280.104 through 280.107.

The documentation of FR is in effect until the expiration of the means of FR for the deductible amount which is provided and must be updated prior to the expiration date in order to maintain future compliance.

Submitting a Request for Determination of Eligibility

If an O/O wishes to use the fund to meet the FR requirements, the O/O must submit a [Request for Determination of Eligibility](#) to MUSTA.

In order to be eligible to use the Fund as a means for FR, the following requirements must be maintained on an ongoing basis:

- The O/O is not ineligible for funding under Sections 21510(4) and (5) of Part 215.
- The USTs are presently in compliance with the registration and fee requirements of Part 211.
- The O/O is not the United States Government.
- The O/O has provided proof of FR for the deductible amount.

Upon approval of a Request for Determination, MUSTA will send the O/O a letter describing the approval, the conditions for maintaining eligibility, and the amount of

coverage provided by the Fund. LARA will be copied on this approval letter and will keep it as your proof of FR. The O/O should maintain their copy of the letter as well.

Until an O/O receives notice of approval from MUSTA, they must maintain their current FR mechanism. There is no expiration date for a Request for Determination of Eligibility as long as compliance is maintained. However, if for any reason the O/O becomes ineligible for funding, the O/O and LARA will be notified as to the change in their status and the O/O will be required to secure another FR mechanism to maintain compliance with the MUSTR.

Using the Fund for Reimbursement of Corrective Actions

Submitting a Claim

An O/O does not have to have submitted or submit a Request for Determination of Eligibility to be eligible to submit a claim.

Claims must be submitted on an Underground Storage Tank Fund [Claim Submittal Form](#). The Claim Submittal Form, along with proof as to how the O/O met/is meeting their FR requirements (for both the time of the discovery of the release and at the time the claim is filed) is required.

Invoices ***should not*** be submitted with claim applications. If a claim is approved, the O/O will be provided with instructions as to the submittal of invoices.

The O/O must certify that they have not, and will not, submit a claim or claims to any insurer or other entity to cover expenses for which they seek reimbursement from the Fund and vice-versa.

Claim Eligibility Requirements

In order for a claim to be approved, the requirements of Section 21510 of Act 451 must be met, including:

- The release from which the corrective actions or indemnification arose were discovered and reported on or after December 31, 2014.
- The UST was at the time of the release and is presently in compliance with the registration and fee requirements of Part 211.
- The O/O reported the release within 24 hours after its discovery.
- The O/O is not the United States Government.
- The claim is not from a release from a UST closed prior to January 1, 1974.
- The O/O has maintained FR for the deductible amount.
- The total amount of reimbursement does not exceed the claims limit or claim period aggregate limit applicable to the claim.

Claims and Claim Period Aggregate Limits

The claims limit for a release is \$1 million minus the appropriate deductible amount of either \$50,000 or \$15,000. Two or more claims arising out of the same, interrelated, associated, repeated, or continuous release or series of releases are subject to one claims limit. Any claim that takes place over two or more claim periods is subject to one claims limit.

The claim period aggregate limit is \$1 million for all releases discovered during a claim period for O/O and affiliates with up to 100 USTs. O/O of more than 100 USTs are subject to a claim period aggregate limit of \$2 million for all releases discovered during a claim period. These aggregate limits are applied based on the claim year for which the release(s) are discovered regardless of the year(s) in which the claims are filed, corrective actions are performed, or invoices are submitted.

A claim period is a one-year period from October 1st of each year through September 30th of the following year.

Invoicing Requirements and Eligibility

To receive reimbursement for corrective actions, an O/O who has an approved claim must submit work invoices along with an [Invoice Submittal Form](#). **Work invoices should not be submitted prior to the approval of a claim.** The amount of a work invoice or work invoices submitted must be at least \$5,000, except for the final work invoice.

Upon receipt of work invoices, the MUSTA Administrator has 45 days in which to make the following determinations:

- Whether the O/O is eligible to receive funding under Part 215.
- Whether the work performed or proposed to be performed is consistent with Part 213, and whether these activities are consistent with achieving site closure.
- Whether the O/O has paid the deductible amount.
- Whether the corrective actions performed are reasonable and necessary considering the conditions at the site of the release.
- Whether the cost of performing the work is at or below the allowable reimbursement in the schedule of costs (described later in this document), whether the cost was based on the competitive bidding requirements established by MUSTA, or, if the cost is not listed item or required bid item, that the cost is reasonable and necessary.

Payment of Work Invoices

Payment of eligible work invoices shall be made **jointly** to the O/O and the consultant that performed the corrective actions within 45 days of the MUSTA Administrator's determination as described earlier.

Cost Controls

In order to maintain compliance with Part 215 and to help insure the financial viability of the Fund, the following cost controls have been established:

- Schedule of allowable costs. This schedule is based upon the input of consultants and DEQ staff and will be updated annually.
- Competitive bidding procedures for certain corrective action activities.
- List of ineligible costs. The items listed in Section 21510(c) of Part 215 are not eligible for reimbursement. MUSTA has created a list of ineligible costs to supplement this section.

All of the above-mentioned cost control methods are available online at www.michigan.gov/deqmusta.

Requesting Reviews of Denials

If the MUSTA Administrator denies a Request for Determination of Eligibility, Claim, Work Invoice, or Request for Indemnification, the O/O may, within 14 days following the denial, request a review by the Board. If the Administrator believes that the dispute may be resolved without the Board's review, the Administrator may contact the O/O to negotiate the dispute prior to the Board's review.

If the Administrator and O/O are unable to negotiate a resolution to the dispute, the matter shall be scheduled for a review by the Board who will conduct a review of the denial to determine whether the Request for Determination of Eligibility, Claim, Work Invoice, or Request for Indemnification is approvable. The Board procedure for reviewing requests can be found on the MUSTA webpage.

A person denied approval by the Board after its review may appeal the decision directly to Circuit Court.

Sources of Additional Information

Information regarding MUSTA and the Fund can be found at: www.michigan.gov/deqmusta.

For questions, clarification, or concerns you may contact the Fund Administrator, Robert Reisner, by email at reisnerr@michigan.gov or phone at (517) 284-5141.