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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING



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TO: Qualified Underground Storage Tank Consultants (QCs)

FROM: Dennis Eagle, Chief
Part 213/215 Enforcement Unit, Compliance and Enforcement Section
Remediation and Redevelopment Division

SUBJECT: Contractual Relationships Between Owners/Operators (O/Os), QC Firms, and Subcontractors and Required Certified Underground Storage Tank Professional (CP) Oversight

The subject of contracts between owners/operators (O/Os), QC firms, and subcontractors performing Part 213¹ corrective action work is a reoccurring topic in the Department of Environmental Quality's (DEQ) monitoring of QC compliance with Part 213 and Part 215². This correspondence is intended to clarify the DEQ's position regarding contractual relationships between these parties relating to the performance of Part 213 corrective actions and QC compliance. The DEQ has informally consulted with the Department of Attorney General on this matter and obtained concurrence on the interpretation of the statutory requirements described below.

Part 213 requires owners/operators (O/Os) of leaking underground storage tank (LUST) sites to retain a consultant to perform corrective action activities. A consultant is further defined as "a person on the list of qualified underground storage tank consultants prepared pursuant to section 21542". Therefore, there must be a direct contractual relationship between the O/O of the LUST site and the QC. If a QC subsequently retains a subcontractor to perform certain corrective action activities on a project, those two firms must in turn have a contract clearly identifying the non-QC firm as a subcontractor to the QC firm. The CP employed by the QC firm shall provide direct oversight of all contracted corrective action work. NOTE: This is required even if the subcontractor employs a CP.

It is not acceptable for a non-QC firm to contract directly with an O/O to perform Part 213 corrective action work. Nor is it acceptable for a QC firm, which does not have a direct contractual relationship with the O/O, to use the results of work performed by a non-QC firm to generate and submit Part 213 reports. It follows that the DEQ will not accept Part 213 reports where a CP, employed by the contracted QC firm, does not directly oversee the corrective action work performed. In these cases, the O/O will be required to have the work completed again at additional expense by an approved QC firm with proper CP oversight.

¹ Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA).

² Part 215, Refined Petroleum Fund (formerly Michigan Underground Storage Tank Financial Assurance [MUSTFA]), of NREPA.

A QC firm should not submit to the DEQ, nor should the CP sign off on, any Part 213 reports where the CP did not directly oversee or perform the work. In addition to the report being rejected at the owner's expense, submittal of such a report would be cause for the revocation of a QC and/or CP's certification pursuant to Part 215.

It is strongly recommended that all contracts between O/Os and QC firms, and QC firms and subcontractors, be in writing to reduce the likelihood of legal disputes. The terms of undocumented verbal agreements, by their nature, are not verifiable; and therefore, cannot be recognized by the DEQ when monitoring QC compliance with Part 213 and Part 215.

If you have questions or need further clarification, please contact Ms. Terri Harmon, Remediation and Redevelopment Division (RRD), at 517-335-7272 or by e-mail at HARMONTL@michigan.gov.

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