



**ANSWERS TO FREQUENTLY ASKED QUESTIONS**

(October 17, 2019 update)

**Financial Responsibility**

Q: Do financial responsibility documents need to be submitted every year?

A: Yes. Every year, you are required to submit a Documentation of Financial Responsibility (FR) form along with an eligible mechanism, i.e. State Financial Test, Letter of Credit, Surety Bond, etc. to provide proof of FR for the deductible amount.

Q: Can both the owner and operator (lessor/lessee) apply for financial responsibility?

A: No. Only one may apply for FR. They should look to their contract to see who is responsible for coverage and that person/entity should register as the owner with the Department of Licensing and Regulatory Affairs, Bureau of Fire Services Storage Tank Division (LARA) and then apply for coverage with the Michigan Underground Storage Tank Authority (MUSTA). We are happy to provide copies to lessors to show that the lessee is meeting their obligations.

Q: How much is the premium?

A: There is no annual premium or fee unless one is incurred by purchasing an eligible mechanism to document FR, i.e. Letter of Credit, Surety Bond, etc. from a third party.

Q: How much is the deductible?

A: The deductible is determined on the total number of tanks an owner/operator (O/O) is affiliated with and/or operates. If an O/O or its affiliates own or operate fewer than eight underground storage tanks (USTs), their deductible amount is \$2,000 per claim. If an O/O or its affiliates own or operate eight or more USTs, their deductible amount is \$10,000 per claim.

**Newly Discovered Tanks**

Q: If previously unknown refined petroleum USTs are discovered, what are the steps needed to increase the likelihood that a subsequent MUSTA claim would be approved?

A: The following steps should be taken:

- Immediately register the tanks with LARA.
- If the tanks are to remain, obtain FR through MUSTA or a private source as described earlier in this document.
- If the tanks are to be removed/closed, immediately notify LARA.
- Report any suspected or confirmed releases within 24 hours of their discovery.
- Complete and submit a MUSTA Claim Submittal Form for the release(s) to EGLE-MUSTA @Michigan.gov.

**Underground Storage Tank Cleanup Fund (a.k.a. MUSTA),  
Legacy Release Program, and Public Highway Cleanup Claims**

(information regarding cost eligibility, bidding, the Schedule of Costs,  
and ineligibles applies to all these types of claims)

Q: Who is eligible to file a MUSTA claim?

A: Only the owner or operator of the refined underground storage tank system at the time of the discovery of the release is eligible to file a MUSTA claim. Approved claims may be transferred to a new owner in the event of a sale of the property. For additional information on MUSTA claim eligibility please refer to Section 21510 of Part 215.

Q: Can an approved MUSTA claim be transferred?

A: Yes, an owner or operator with an approved MUSTA claim who sells or transfers the property that is subject of the approved claim may assign or transfer the approved claim to the new owner. The Transfer of Claim Submittal Form can be found on the MUSTA webpage.

Q: If a company name changes how do I change the name for my claim?

A: To update a company name associated with an approved MUSTA claim-the following must be completed:

- Amend the-facility's affiliated underground storage tank registration with the LARA.
- Following the updating of registration with LARA the Transfer of Claim Submittal Form which can be found on our webpage needs to be completed and submitted to MUSTA for review.

Q: Can I submit a claim if I am not using MUSTA for financial responsibility?

A: Yes, a claim for a release from a facility not utilizing MUSTA to meet its financial responsibility can be submitted to MUSTA for review and potential approval of coverage.

Q: Are releases from spill buckets eligible for MUSTA claims?

A: Yes, as long as all other eligibility requirements are met.

Q: What are the main reasons for MUSTA claim denials and how can they be avoided?

A: Claims are denied primarily for the following reasons:

1. The release occurred prior to December 30, 2014.
2. The release was not reported by the O/O as required by Part 211 with 24 hours of discovery.
3. The O/O failed to meet the financial responsibility requirements of Part 211 at the time of the release.

To help avoid these potential denials make sure the release was discovered on or after December 30 of 2014; that when a release (both suspected and confirmed) is discovered it is reported to the proper authorities within 24 hours, and make sure the all necessary insurance requirements are in place.

Q: I own a property with open non MUSTA covered historical release(s) and I just had a new release. How will the old release(s) affect the claim for my recent release?

A: Assuming the new release meets MUSTA eligibility requirements and is eligible for MUSTA coverage, these situations will be reviewed on a case by case basis. If possible MUSTA expects that costs associated with the ineligible release(s) to be separated from those related to the new release. If this cannot be done as in the case of comingled plumes a cost allocation may be requested.

Q: If I have an approved MUSTA claim and then have a new release, will the new release be covered? Do I have to file a new claim?

A: Yes, if MUSTA eligibility requirements are met for the new release it will be eligible for coverage under the MUSTA program. For corrective actions associated with the new release to be covered by MUSTA the Additional Release Eligibility Submittal Form located on our webpage must be completed and submitted to MUSTA for review and approval. Costs related to the additional release will be subject to the reimbursement limit of the original claim.

Q: Can I appeal claims or charges that are denied by the MUSTA Administrator?

A: Yes. An owner or operator has 14 days from the day of the receipt of denied claims and/or invoice charges to file a Request for Review by the MUSTA Administrator.

Q: Will a MUSTA claim be approved if a release is discovered but the tanks had been previously removed or closed-in-place.

A. No. If there is no tank, the release should have been known at the time the tank(s) was/were removed or closed, which means it was not reported within 24 hours of its discovery and may have occurred prior to December 30, 2014, depending on when the tanks were closed.

Q: Will the Legacy Release Program be extended?

A: No. The acceptance of claims ended in August of 2018.

Q: Are local roads eligible for Public Highway Cleanup funding or only highways?

A: Yes, local units of government and county road commissions are eligible to seek reimbursement under the Public Highway Cleanup Fund for certain costs related to the management, relocation, or disposal of media contaminated by a release or releases from a refined petroleum underground storage tank system or systems. – Section 21506a(f) of Part 215. The claim must be associated with a release of refined petroleum from an UST system managed under Part 213, is for corrective actions completed after January 24, 2018, and an institutional control must be in place prior to initiation of the work.

### **Eligibility of Costs**

- Q: When does the eligibility for work that is performed begin?
- A: For confirmed release(s) for which the claim was approved, eligibility for work begins at the date and time the release was discovered. The exception to this is a suspected release(s) that is upgraded to confirmed, in which case eligibility begins 24 hours prior to the date and time the release was upgraded to confirmed.
- Q: Will MUSTA reimburse for a non-restricted closure in cases where an on or off-site property owner refuses to allow restrictions on their property?
- A: No, Section 21510c(p) of Part 215 prohibits approval of costs arising from corrective actions performed in excess of the corrective actions required to obtain a restricted closure based on then current land use.
- Q: Does MUSTA reimburse compensation costs to a non-liable off-site property owner to allow restrictions to be placed on their property?
- A: Yes, MUSTA currently reimburses for reasonable compensation to off-site property owners for restrictions placed on their property. It is recommended that the MUSTA Administrator and associated environmental quality analyst (EQA) are kept informed on the negotiations of the compensation amount to ascertain what is reasonable.
- Q: Does MUSTA reimburse compensation costs to a non-liable off-site property owner to allow access?
- A: Yes, MUSTA currently reimburses for reasonable, one-time compensation to off-site property owners for access. It is recommended that the MUSTA Administrator and EQA are kept informed on the negotiations of the compensation amount to ascertain what is reasonable.
- Q: I have a Remediation and Redevelopment Department (RRD) approved Corrective Action Plan, does that mean all of the work will be eligible for reimbursement under MUSTA?
- A: No. MUSTA can only reimburse for corrective actions related to the release for which a claim is approved (a CAP may be developed to address multiple releases), and per Section 21510c(p) of Part 215, can only reimburse costs for corrective actions necessary to obtain restricted closure (closure via institutional controls) based on land use at the time the discovery of the release for which the claim was approved.
- Q: The RRD project manager is requesting that my client complete certain work, will it be covered by MUSTA?
- A: MUSTA can only reimburse for corrective actions required to obtain restricted closures based on the use of the property at the time of the discovery of the release for which a claim was approved and for costs that are reasonable and necessary considering the conditions at the site of the release. Requests for corrective actions by RRD in excess of these parameters is not eligible for funding through MUSTA. In this situation it is recommended that a meeting be held with all relevant parties to ensure that stakeholders have the same understanding of the site conditions and individual program requirements.

Q: Does MUSTA reimburse for Corrective Action activities performed by the owner or owner's staff?

A: No, not without prior written approval from the Administrator.

Q: What does MUSTA provide pre-approval for?

A: Per Part 215 "prior written approval" from the Administrator is required for:

- Goods and services provided by the owner/operator.
- Charges related to additional "initial response" soil or liquid removal as described in the Schedule of Costs Note 4.
- Charges related to the excavation and disposal of more than 1,500 tons of eligible soil.
- Eligible labor of a Professional 4 (MUSTA Schedule of Costs rate Code# 1-1) that exceeds 4 hours per calendar month.
- Required competitive bids where only 2 bids were obtained.
- Required competitive bids where the lowest bidder was not accepted.

Note: With a prior-written-approval, all other eligibility requirements must be met.

Q: Are due care costs eligible for funding?

A: No.

### **Invoicing, Bidding, and Schedule of Costs**

Q: Is there a deadline date for submitting invoices?

A: No, currently there is not an expiration date or deadline for submittal of invoices to MUSTA. However, the first invoice should not be submitted until after the claim is approved. Although there is no deadline for the submittal of invoices it should be noted that following closure of a MUSTA covered release, only those cost for the abandonment of monitoring wells and/or remediation system decommissioning are eligible for reimbursement. These activities must be performed within 1 year of the closure date.

Q: Will MUSTA intervene on behalf of a consultant who has not been paid by the claimant?

A: No. MUSTA is not involved in the contractual relationship between an owner or operator and their consultant. The reason that two-party checks are issued is so that the consultant has to sign-off on the checks prior to their cashing or deposit by the claimant.

Q: Does MUSTA issue single-party checks for reimbursements?

A: No, except in rare circumstances that are pre-approved by the MUSTA Administrator.

Q: What happens if at least 3 bids are requested but only 2 responsive bids are received?

A: Preapproval must be obtained from MUSTA prior to the services being performed. Generally, the bidding requirements will be considered as met. MUSTA will track to determine that non-responsive bidders are not repeatedly solicited.

Q: Can I (consultant) submit invoices to MUSTA that I have not actually sent to my client with the intent to submit to my client only the approved costs?

- A: No. MUSTA is meant to be a reimbursement program and therefore the consultant should have been paid for corrective actions completed during the invoicing period prior to seeking reimbursement from MUSTA.
- Q: Can I submit invoices to MUSTA that were denied by insurance?
- A: No. Costs that have been or will be submitted to or that have been paid pursuant to an insurance policy or policies are not eligible for reimbursement.
- Q: If I have a commercial insurance claim, can I submit invoices to MUSTA until the insurance deductible has been met?
- A: Yes.
- Q: If I suspect an item or charge will be ineligible, should I deduct the cost from reimbursement request total that I submit to MUSTA?
- A: If you know an item is ineligible, then it should not be included in the total claimed on the Invoice Submittal Form and should be identified as ineligible on the backup documentation (e.g. the consultant invoices). However, if a consultant is unsure if an item is ineligible, it can be submitted and MUSTA staff will make the determination and deduct any ineligible costs from the reimbursement total.
- Q: Are laboratory costs for Lead and Leaded gasoline related volatile compounds eligible for my claim on a gasoline release?
- A: Reimbursement is based on the product stored in the UST at the time of the discovery of the release for which a claim was approved was reported. Since sale of leaded gasoline ceased in January 1996, the cost for lead analysis is not eligible and the cost of volatile organic carbon analysis is limited to the maximum rate for Unleaded Gasoline Parameters on the Schedule of Costs. The only exception for claims covered under Underground Storage Tank Cleanup Fund is for releases from newly discovered USTs suspected to have contained gasoline prior to 1996. For LRP claims, analysis of leaded gasoline related parameters is reimbursed if testing for these parameters occurred prior to 12/30/14 and if results exceeded applicable RBSLs or SSTLs.
- Q: Is a subcontractor allowed a per-diem and at what rate?
- A: A subcontractor is allowed a per-diem of \$150/day in accordance with Schedule of Costs Code 2-4. However, the requirement for a hotel receipt is waived in the case of a subcontractor.
- Q: Are the consultant-charges for both mileage and a vehicle eligible on the same day?
- A: Yes
- Q: If I use a geoprobe to direct push soil borings for discreet soil sampling and later use the same geoprobe to spin 4 ¼ augers to install wells, is the HSA per-foot rate eligible?
- A: No. If a geoprobe or similar device was mobilized to the site for the advancement of soil borings and installation of monitoring wells the correct MUSTA reimbursement codes for this equipment are either 6-1 (1/2 Day with operator) or 6-2 (Full day with operator).

- Q: If I obtain bids in concurrence with MUSTA's competitive bid policy for drilling (e.g. drilling wells exceeding 2 inches in diameter or drilling in bedrock greater than 60 ft), would the line items on the lowest bidder's invoice that are typically ineligible (heated power-washer, coring machine, etc.) be eligible?
- A: Yes.
- Q: Can I substitute competitive bidding of items on the Schedule of Costs instead of using the Schedule (e.g. Direct Push, HAS drilling less than 60 ft)?
- A: No.
- Q: Should I just submit my excavation and disposal contractor invoices and invoice backup as "NL", and let MUSTA sort out the appropriate quantities and codes for reimbursement?
- A: No. For limited source removal during initial response activity without bids, the consultant or claimant should calculate the total cost of excavation, transport and disposal of contaminated soil, provide cost per ton, total tons, and code appropriately. Heavy equipment mob/demob, if applicable, would be listed under a separate code. Similarly, this would also apply to limited source removal of contaminated liquids where total cost of recovery, transport and disposal of liquids is calculated and divided by total gallons to obtain a cost per gallon.
- Q: What code should I use if there is no corresponding code on the Schedule?
- A: Code NL
- Q: Does the subcontractor markup amount have to be included in the MUSTA maximum amount for the specified MUSTA code? For example, if I have a subcontractor invoice for a push probe of \$1,800.00, am I not allowed to charge the markup on this since \$1,800.00 is the maximum allowed for MUSTA code 6-1, or is the markup always in addition to the charge?
- A: Markup is not included in the subcontractor service code maximum. It is an additional charge under its own code.