



### **Financial Responsibility**

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

A: No. 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 **every other year**.

**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. The suspected or confirmed release report should be submitted to LARA with, or after the UST registration form is submitted to LARA.
- Complete and submit a MUSTA Claim Submittal Form to the release(s) to [EGLE-MUSTA@Michigan.gov](mailto:EGLE-MUSTA@Michigan.gov).

## **Underground Storage Tank Cleanup Fund (a.k.a. MUSTA) Claims**

**Q: *Who is eligible to file a MUSTA Claim?***

A: Only the O/O of the refined underground storage tank system at the time of the discovery of the release is eligible to file a MUSTA claim. 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 O/O 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 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 MUSTA 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. If all other eligibility requirements are met.

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

A: MUSTA claims are denied primarily for the following reasons:



1. The release was discovered prior to December 30, 2014.
2. The O/O failed to meet the financial responsibility requirements of Part 211 at the time of the release.
3. The UST was not in compliance with registration requirements of Part 211 at the time of the release.
4. The suspected or confirmed release was not reported by the O/O within 24 hours of discovery as required by Part 211 and associated MUSTR rules. Conditions that require the reporting of a confirmed release (excluding sites with prior releases where a suspected release may be appropriate) include, but are not limited to, visible or olfactory evidence as required by MUSTR Rules Section 270.72(c).
5. A suspected release (excluding an IM-10 suspected release) was not upgraded to confirmed within 14 working days as required by MUSTR Rules Section 280.50 and Form BFS-3826.
6. An “Underground Storage Tank System Site Assessment Report and Closure or Change-In-Service Registration Form” was not submitted to LARA within 45 days of sample collection as required by MUSTR Rules Section 280.61(d) and Form BFS-3881.

**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 open 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 O/O has 14 business 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, or a tank was closed in place, 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.

### **Legacy Release Program Claims**

**Q: *Will the Legacy Release Program (LRP) be extended?***

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

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

A: Yes. The claimant or their consultant have 14 business days from the day of the receipt of denied claims and/or invoice charges to file a Request for Review by the MUSTA Administrator.

### **Public Highway Cleanup Claims**

**Q: *Who is eligible to file a Public Highway Cleanup (PHC) Claim?***

A: A local unit of government or county road commission may file a claim to seek reimbursement 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 (refer to 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 for corrective actions completed after January 24, 2018. An institutional control must be in place prior to initiation of the work.

**Q: *Are local roads eligible for PHC funding or only highways?***

A: A public highway, street, road, or alley, that are owned by a local unit of government are eligible for PHC funding, provided all other eligibility requirements are met.

**Q: *Can the PHC program be used to fund corrective actions to remediate the degree and extent of contamination?***

A: No. The PHC program may only be used for the management, relocation, or disposal



of contaminated media encountered during road or public utility maintenance, repair, or expansion.

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

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

### **Eligibility of Costs**

*\*Information regarding cost eligibility, bidding, the Schedule of Costs, and ineligibles applies to the MUSTA, LRP, and PHC programs*

**Q: *When does eligibility for work that is performed begin?***

A: For each program, eligibility begins as specified below:

**MUSTA Claims:** 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 the calendar day prior to the date and time the release was upgraded to confirmed. Additionally, cost incurred to verify that a confirmed release has taken place are ineligible.

**LRP Claims:** Eligibility begins for costs incurred on or after December 30, 2014.

**PHC Claims:** Eligibility begins for costs incurred after January 24, 2018 AND after an institutional control, per Section 21310(a) of Part 213, is in place for the affected roadway prior to initiation or work.

**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-liaible 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 the associated environmental quality analyst (EQA) are kept



informed on the negotiations of the compensation amount to ascertain what is reasonable.

**Q: *I have a Remediation and Redevelopment Division (RRD) approved Corrective Action Plan, does that mean all 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.

**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 less than 3 bids were obtained.
- Required competitive bids where the lowest bidder was not accepted.
- Invoices submitted for less than the minimum requirement of \$5,000 unless it the final invoice to be submitted.

*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 and the claimant is registered in SIGMA, the state's payment program. If an invoice is received prior to the approval of the associated claim or the completion of the SIGMA registration it will be rejected. Although there is no deadline for the submittal of invoices it should be noted that following closure of a MUSTA or LRP 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 must 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 when pre-approved by the MUSTA Administrator.

**Q: What happens if at least three (3) bids are requested but less than three (3) responsive bids are received?**

If three responsive bids are not received, bids shall be solicited from additional contractor(s). If a third responsive bid cannot be obtained., the claimant or authorized representative must seek and receive approval from the Authority prior to the services being performed.

**Q: Can I (consultant) submit an invoice 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 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 the 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 been out of service since January 1996 and 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 rate in accordance with Schedule of Costs Code 2-4 if a hotel receipt is provided. However, the requirement for a hotel receipt is waived in the case of a subcontractor.

**Q: *Are the consultant-chargers 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 HAS 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 accordance 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 60ft)?***

A: If the service requires competitive bidding per the Competitive Bidding Process document, then the Schedule of Costs does not apply. If the service and associated costs are covered under the Schedule of Costs (for example, installation of 2-inch wells less than 60ft) then reimbursement will be based on the Schedule of Costs.)

**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 during initial response 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 for 'not listed'.

**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.