

Environmental Controls in ROWs and Available Cleanup Funding Programs

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Roadmap of Presentation

- Overview of MI “cleanup” laws
- Leaving contamination beneath right-of-way
- Funding programs available for local gov’t.
- Questions, if time available



Michigan's Environmental "Cleanup" Laws

- Part 201: Environmental Remediation
 - Commercial/industrial process, above ground storage tanks, environmental emergencies
- Part 213: Leaking Underground Storage Tanks
- Goals:
 - Risk Management
 - Remediation for Redevelopment (R4R)
- Contaminated media
 - Soil and groundwater (risks may include drinking water, direct contact, inhalation)

Risk Management

➤ What is it?

- Not necessarily “cleaning up” sites
- Statutes allow for contamination to stay in place, as long as it is protective of public health and safety
- Land or resource use restriction (LRUR) may be used to address the remaining risk if:
 - LRUR is protective, and
 - Persons who own and use property have knowledge

What About Right-of-Ways?



Road Surface Purpose

- Engineered physical barrier that, by virtue of its presence, prevents (controls) exposure to contamination beneath surface.
- Written instrument provides information that helps modify or guide human behavior regarding the barrier (institutional control).
- Engineering control + institutional control = land or resource use restriction = manage risk = achieve regulatory closure.

MDOT Environmental License Agreement

- Described in Part 213; available for Part 201.
- Leave environmental contamination in place within MDOT operational ROW
- May be necessary for liable parties to pursue in order to obtain regulatory closure by the MDEQ.
- Contamination impacted soil and/or groundwater
- Reliable mechanism to prevent unacceptable exposure to the remaining contamination in MDOT ROW

Public Highway Institutional Control

- Described in Part 213; available for Part 201
- Allows environmental contamination to remain in place within public highway owned or controlled by road commission or local unit of government.
- Required items from Owner/Operator:
 - Provide technical information,
 - Confirm no current plans to relocate, vacate, or abandon public highway, and
 - Provide certification that either contamination does not enter storm sewer system or provide all information regarding nature/extent of contamination that enters or has potential to enter.

What Does Public Highway Institutional Control Do?

- Provides the LUG and others with information necessary when planning and performing construction projects, including worker safety and exposure control.
- Provides information regarding ALL contaminated media and exposure pathways that may be present within a road ROW.
- Part 213 requires that a person who applies for a permit to perform work within public highway shall identify whether the proposed work will take place within AIC area.

Important to Know

- “Due care” obligations do not apply to a road comm. or LUG for public highway under Part 213
 - Except to comply with a LRUR (aka IC).
- Liable owner or operator is responsible for due care for regulated substances within public highway under Part 213.
- Part 213 states that reliance on public highway does not impose liability on MDOT or LUG
 - Or prevent those entities from repairing, reconstructing, enlarging, relocating, etc. the public highway or permitting any utilities to use public highway.

Public Highway Cleanup Program



Public Highway Cleanup Program

- Available to local units of government and county road commissions for the cost of corrective actions to manage, relocate, or dispose of media contaminated by regulated substances left in place within a public highway.

Public Highway Cleanup Program (PHC) Eligibility

1. Claim must be associated with a release of refined petroleum from an underground storage tank system being managed under Part 213 .
2. Claim is for corrective actions completed after January 24, 2018, the effective date of the program.

Public Highway Cleanup Eligibility (cont.)

3. An Alternate Institutional Control (AIC) or Road Dedication Letter (RDL) must be in place for the affected roadway prior to initiation of the work and the submittal of the PHC Claim
 - Ordinance – May be an acceptable institutional control in some cases.
 - The AIC, RDL, or ordinance must be submitted to MUSTA with the PHC Claim Submittal Form for PHC Claim approval.

Public Highway Cleanup Funding & Reimbursement Limits

- Funded from Refined Petroleum Fund
(one cent per gallon on all refined petroleum product sold for resale or consumption)
- “Program” Funding Limit: No statutory limit
- Per Claim Funding Limit: \$200,000 with no co-pay or deductible
- Claims to date: None

Petroleum Underground Storage Tank (UST) Owners/Operators

Financial Responsibility (FR)

The requirement for petroleum UST owners and operators to have the funds to pay for the cleanup and other damages that may occur from a release from their UST systems.

Financial Responsibility Requirement

- \$1 million of Financial Responsibility (FR) required.
- May use MUSTA Fund to meet FR requirement by applying and documenting FR for the appropriate deductible amount (\$2,000 for owners or operators of 7 USTs or less or \$10,000 for owners or operators of 8 or more USTs).

Main Ways of Demonstrating FR for the Deductible Amount

- State financial test in which an owner or operator attests that they have a tangible net worth of at least 3x their deductible amount
- Private Insurance
- Letter of Credit
- Local Unit of Government Financial Test

Petroleum Underground Storage Tank (UST) Owners/Operators

Underground Storage Tank Cleanup Fund (MUSTA Claims)



MUSTA Claim Eligibility Requirements

- Releases discovered on or after December 30, 2014
- Releases reported within 24 hours of discovery
- USTs are properly registered at the time of the release
- FR mechanism in place at the time of the release
- Owner at the time of the discovery of the release must file the claim
- Approved claims are transferrable to new owners



MUSTA Claim Reimbursement Limits

- Per claim limit of \$1 million minus the appropriate deductible amount
- Aggregate limits for all claims for a single owner per reporting period (October 1st – September 30th)
 - \$1 million for owners and operators of 100 or fewer USTs
 - \$2 million for owners and operators of 101 or more USTs
- Aggregate limits are based on the reporting period when the release was discovered regardless of when the claim is filed or work is performed and invoiced

Eligible Costs and Activities for All Programs Administered by MUSTA

Includes PHC program

- Employ a Qualified UST Consultant
- Must be reasonable and necessary
- Comply with MUSTA Schedule of Costs
- Comply with MUSTA Bidding Requirements
- Comply with MUSTA List of Ineligibles

MUSTA Contacts / Sources of Information

- Visit www.michigan.gov/deqmusta
- Sign up for our Email list at:
<https://public.govdelivery.com/account/MIDEQ/subscriber/new>
- Call (517) 284-5141
- Email DEQ-MUSTA@michigan.gov



Time for Questions

