

# Legislative Analysis



## UNDERGROUND STORAGE TANK CLAIMS AMENDMENTS

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**House Bill 6023 as introduced**  
**Sponsor: Rep. Laurie Pohutsky**  
**Committee: Agriculture**  
**Complete to 12-5-24**

Analysis available at  
<http://www.legislature.mi.gov>

### SUMMARY:

House Bill 6023 would amend Part 215 of the Natural Resources and Environmental Protection Act (NREPA), which regulates underground storage tank corrective action funding. The bill would make changes regarding claims for cleanup of releases from underground storage tanks, as well as eligibility for making a claim and the requirements that must be met by the entity seeking to make a claim.

**Section 21510** of NREPA establishes who is eligible to receive money from the Underground Storage Tank Authority for corrective action or indemnification due to a release from a fined petroleum underground storage tank system. The bill would add language providing that it must be a *confirmed* release, and would modify the following eligibility requirements:

- The refined petroleum underground storage tank from which the release occurred was, at the time the release was discovered, and is presently in compliance with the registration and fee requirements of Part 211 of NREPA.<sup>1</sup> (The bill would remove the underlined phrase, and would provide that, if the refined petroleum storage tank is owned by a federally recognized tribe, then it must have been, at the time of the release's discovery, in compliance with federal registration and fee requirements.)
- The owner or operator must report a *confirmed* release within 24 hours after its discovery as required by Part 211 and rules promulgated under that part. (The bill would remove the underlined provision, and add the italicized word *confirmed*.)
- The owner or operator complied with the financial responsibility requirements of Part 211 at the time the release was discovered. (The bill would add that, for a tank owned by a federally recognized tribe, the tribe must have complied with federal financial responsibility requirements, although this could be waived by the fund administrator if the release came from a tank that was previously unknown to the tribe.)
- The total amount of expenditures, including deductible amount, does not exceed the claim limit or claim period aggregate limit for that claim. (The bill would remove this requirement.)

The bill would add the following eligibility requirements:

- The claim must be filed within 24 months after the confirmed release is reported.
- The claim is not for a release discovered after the tank system from which it occurred was closed or considered permanently closed under Part 211 or its rules.
- The owner or operator is otherwise in compliance with Part 215.
- The administrator and board may consider substantial compliance when making an eligibility determination.

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<sup>1</sup> Part 211 of NREPA: <https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-451-1994-II-8-211>

The bill would remove provisions that now allow a tank system owner or operator to receive funds for corrective action or indemnification due to a release that originated from an aboveground piping and dispensing portion of a system if certain requirements are met. The bill also would eliminate a provision that now prohibits an owner or operator from receiving money from more than one claim for a release at the same location, except under circumstances relating to discovery of a subsequent release during an approved corrective action to address the first release or if the tank system was upgraded or replaced under Part 211.

The bill would require that an approved claim must cover corrective actions related to the release that was the basis of the claim's approval. If a subsequent release is discovered at the same location before closure of a release currently covered by a claim, then it could receive funding for corrective actions in accordance with the following:

- A request for additional release coverage is submitted on a form created by the authority.
- If approved, the additional release would be considered part of the most recently approved claim and would be subject to the most recently approved claim's deductible, claims limit, and claim period aggregate limits.

An additional claim could be granted to an owner or operator for a release at a location in accordance with the following:

- The release covered by the most recently approved claim achieved closure.
- A new claim form is submitted to, and approved by, the authority.

An additional claim would be subject to the same eligibility requirements of an initial claim, and to the same deductible, claims limit, and claim period aggregate limit.

The bill would prohibit the authority from approving a claim for any of the following:

- A release that was expected or intended by an owner or operator or an employee of an owner or operator.
- A release caused by, based on, resulting from, or attributable to the owner's or operator's intentional, knowing, willful, or deliberate noncompliance with a statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, executive order, or instruction of any governmental agency or body.
- A release arising from the ownership, maintenance, use, or entrusting to others of an aircraft, an automobile, rolling stock, or a watercraft, including loading and unloading.
- A release arising from a consequence, whether direct or indirect, of war (whether declared or not), invasion, act of a foreign enemy, terrorism, hostilities, civil war, rebellion, revolution, insurrection, usurpation of power, strike, riot, or civil commotion.
- A claim is filed more than two calendar years after the confirmed release was reported.

**Section 21510a** of NREPA establishes deductible limits for a claim. The bill would change *owner or operator* to ***claimant*** in relation to who is responsible for the deductible amount.

The bill would define ***claimant*** as the person to whom an approved claim is assigned or transferred. This overlaps with the definition of an ***operator***, now defined as the person who is currently, or was at the time of a release, in control of, or responsible for, the operation of an underground storage tank system, or the person to whom an approved claim has been assigned or transferred.

Currently, the deductible for an owner or operator, or their affiliate, who owns or operates fewer than eight refined petroleum underground storage tanks is \$2,000 per claim. For an owner or operator, or affiliate, who owns or operates eight or more such tanks, the deductible is set at \$10,000 per claim.

In addition to referring to the claimant rather than the owner or operator, the bill would provide that the ownership thresholds apply to tanks owned or operated in Michigan. The bill also would provide that the deductible amount applies to each approved claim. (Currently, the deductible amount applies to each claim, but if two or more claims arise out of a related or continuous release, then the deductible only needs to be met once, and any claim that takes place over two or more claim periods is also subject to one deductible amount. The bill would remove this provision.)

**Section 21515** outlines eligibility requirements to receive money from the authority for corrective action. The bill, among other changes, would do both of the following:

- Increase, from 45 days to 60 days, the amount of time the administrator has to make certain determinations following receipt of work invoices from a claimant.
- Allow work invoices to be submitted by the claimant to the administrator if more than 120 days have passed since the most recent work invoice was submitted. (Currently, work invoices may be submitted after initial approval of the claim and if the aggregate amount is \$5,000 or more. The bill would retain this provision.) The bill would require a work invoice to be submitted within 365 days after the completion of the services for which reimbursement is being sought, and provide that it could not be submitted within 14 days following submission of the most recent previous work invoice.

The bill would prohibit the authority from approving the following costs for reimbursement:<sup>2</sup>

- Costs arising from corrective actions that are not related to the release for which the claim was approved.
- Punitive, exemplary, or multiplied damages, fines, taxes, penalties, assessments, punitive or statutory assessments, or any civil, administrative, or criminal fines, sanctions, or penalties.
- Legal or civil claims made by a claimant against another owner or operator of the refined petroleum underground storage tank system.
- Costs, charges, or expenses incurred by the claimant for goods supplied by the claimant or services performed by the staff or employees of the claimant, or its parent, subsidiary, or affiliate, unless incurred with the authority's prior written approval.
- Costs arising from the testing, repair, reconstruction, or upgrading of a refined petroleum underground storage tank system, or any other improvements and site enhancements or routine maintenance on, within, or under a location.
- Costs arising from removing, replacing, or recycling a refined petroleum underground storage tank system, including removal and disposal of tank contents, removal and replacement of pavement over the tank system footprint, or backfilling and compacting void space left by the removal of that system.
- Costs incurred more than one calendar day before the reporting of the confirmed release for which a claim is approved.

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<sup>2</sup> The provisions that now list claims that cannot be approved the authority are in section 21510c of NREPA, which the bill would repeal.

- Costs related to the injury of an employee of the claimant or its affiliate arising from and in the course of employment or while performing duties related to the conduct of the business of the claimant or its affiliate by a spouse, child, parent, brother, or sister of that employee. This would apply whether the claimant may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else that must pay damages because of the injury.
- Any obligation of the claimant under worker's compensation, unemployment compensation, or disability benefits law or a similar law.
- Any liability or claim for liability of others assumed by the claimant under a contract or agreement unless the claimant would have been liable in the absence of the contract or agreement.
- Costs that have been or will be submitted to or that have been paid in accordance with a third-party agreement or an insurance policy.
- Costs arising from corrective actions that are not necessary to obtain a restricted closure based on the land use at the time and location the release was discovered. A restricted closure could be achieved using one or more institutional controls, including restrictive covenants, an environmental license agreement with the Department of Transportation, public highway as an alternative mechanism, or an ordinance, state law, or state administrative rule. Reimbursement of corrective actions conducted in place of an institutional control could be considered eligible if any of the following conditions are met and approved in writing by the administrator before the corrective actions take place:
  - The corrective action will eliminate the need for installation and long-term operation, maintenance, and monitoring of mitigation measures that would otherwise be necessary to prevent unacceptable exposures.
  - The corrective action will result in closure of the release in a more expeditious manner and provide a higher level of confidence that closure of the release will remain protective.
  - The corrective action is necessary to achieve closure of off-site impact to properties that are not owned, operated, or controlled by the claimant or the claimant's affiliate that is liable under Part 213.
- Costs incurred after the closure date of the release for which the claim was filed, except for costs for monitoring well abandonment, remediation system decommissioning, or related to requirements recorded in an approved restrictive covenant or institutional control, performed within one year after the closure date. The administrator may grant an exception to the costs described in this provision.
- Litigation costs.
- Any form of interest, late payment penalties, or carrying charges.
- Shipping or postage charges related to the delivery of soil, liquid, or vapor samples.
- Administrative costs, such as bookkeeping or form preparation, including eligibility requests, claims, invoices, proposals, and change orders, and purchase orders between claimant and consultant or claimant and contractor.
- Environmental liability insurance premiums.
- Replacement or repair of pavement, landscaping, fences, utilities, or structures; property upgrades; or raze-and-rebuild activities, unless directly associated with eligible and necessary corrective actions.
- Costs incurred due to lost income, property loss, or reduced property values unless part of an indemnification request approved under section 21518 of NREPA.

- Fines or penalties imposed by local, state, or federal government agencies.
- Punitive or exemplary damages.
- Costs related to the excavation, transport, and disposal of more than 1,500 tons of soil without prior written authorization from the administrator.
- Laboratory rates for rapid turnaround sample analysis that exceed the maximum allowable rates on the schedule of costs, unless preapproved by the administrator.
- Charges for equipment not used on the date of the charge.
- Costs incurred if a non-low bidder performs required competitively bid services, unless preapproved by the administrator.
- Corrective action activities, labor, laboratory testing, drilling, or other work that exceeds actual costs as demonstrated by submitted invoices.
- Potentially refundable costs to the claimant, including permit inspection fees and cash bonds, until the cost is actually incurred.
- Consultant markup of items listed on the schedule of costs, not including subcontractor invoices and schedule-of-cost items included on a subcontractor invoice.

**Section 21518** outlines what an owner or operator must do to be eligible to receive money from the authority for indemnification. The bill would change *owner or operator* to *claimant*.

**Section 21519** would be amended to require the authority to pay out work invoices in the order they are received. Presently, the authority pays out *claims* in the order they are received. If funds are insufficient to pay out all approved claims, each claimant eligible to submit a work invoice would have to be notified of the fund's financial situation.

**Section 21519a** provides for a legacy release program to reimburse eligible persons for costs of corrective action for certain historic releases from refined petroleum underground storage tank systems. As part of the eligibility requirements, any underground storage tank system operating at the location from which the release occurred must be in current compliance with Part 211 registration requirements. The bill would remove this provision, and it would add a requirement that, in order to be considered for reimbursement, work invoices must be submitted to the administrator within 180 days after the bill takes effect.

**Section 21521** provides a process for how to request a board review of a denied claim, work invoice, request for indemnification, or request for eligibility determination. Presently, the timeline for requesting the review is 14 days following denial. The bill would change this to 14 *business* days.

**Section 21524** provides for membership on the authority's board of directors. The bill would remove a requirement that one member be an individual from a statewide business association that includes owners or operators of refined petroleum underground storage tanks. The bill would instead require that one member be an individual representing qualified underground storage tank consultants with considerable experience in remediating leaking underground storage tank systems.

### **Other provisions**

Generally speaking, the bill would add references in several provisions requiring federally recognized tribes to comply with equivalent federal regulations relating to underground storage tanks to be eligible for funds through the state program.

Finally, the bill would repeal section 21510c of NREPA, which now delineates the types of claims that cannot be approved by the authority.

MCL 324.21502 et seq. and MCL 324.21510c (repealed)

**FISCAL IMPACT:**

The changes to underground storage tank corrective action reimbursement requirements and processes included in House Bill 6023 are unlikely to significantly affect EGLE costs or revenues. The department would have access to additional fund revenue to cover administrative costs under the bill, but this change would not affect the total revenues or costs of departmental funds. The FY 2024-25 EGLE budget includes \$41.5 million from the Refined Petroleum Fund, the majority of which (\$33.6 million) supports contaminated site remediation and redevelopment programs. This budget also includes \$20.5 million from the Underground Storage Tank Cleanup Fund, the majority of which (\$20.1 million) supports the activities of Underground Storage Tank Authority referenced in the bill. The revenue source for both of these funds is an environmental protection regulatory fee of one cent per gallon of refined petroleum sold for resale or consumption in Michigan. The bill is unlikely to affect costs or revenues for any local unit of government that does not seek reimbursement for corrective actions conducted under Part 215 of NREPA.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.