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**BILL ANALYSIS**

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Senate Bill 1260 (as enrolled)  
House Bills 6047 and 6202 (as enrolled)  
Sponsors: Senator Michelle A. McManus (S.B. 1260)  
Representative Chris Kolb (H.B. 6047)  
Representative David Palsrok (H.B. 6202)  
Senate Committee: Appropriations  
House Committee: Natural Resources, Great Lakes, Land Use, and Environment

**PUBLIC ACT 318 of 2006**  
**PUBLIC ACTS 321 and 322 of 2006**

Date Completed: 1-30-07

**CONTENT**

**Senate Bill 1260 amended Part 215 (Refined Petroleum Fund) of the Natural Resources and Environmental Protection Act to authorize expenditures from the Refined Petroleum Fund for the Refined Petroleum Product Cleanup Initial Program and the Temporary Reimbursement Program.**

**House Bills 6047 and 6202 amended Part 215 to provide for implementation of the Refined Petroleum Product Cleanup Initial Program and the Temporary Reimbursement Program.**

The bills took effect on July 20, 2006.

**Senate Bill 1260**

The bill created the following new definitions:

- Advisory board – the Temporary Reimbursement Program Advisory Board.
- Class I site – a site posing the highest degree of threat to the public and environment as determined by the Department of Environmental Quality (DEQ), based on a classification system developed by the Department.
- Class 2 site - a site posing the second-highest degree of threat to the public and environment as determined by the DEQ, based on a classification system developed by the DEQ.

- Eligible person – an owner or operator who meets the eligibility requirements and received approval of the precertification application by the DEQ.
- Precertification application – the application submitted by an owner or operator seeking the DEQ's eligibility determination for reimbursement for the costs of corrective action from the Temporary Reimbursement Program.
- Refined Petroleum Product Cleanup Initial program – the program established in Section 21553 (which House Bill 6047 added).
- Refined Petroleum Product Cleanup program – the Refined Petroleum Product Cleanup Initial program and the program based on the recommendations of the Petroleum Cleanup Advisory Council.
- Site – a location where a release has occurred or a threat of a release exists from an underground storage tank system, excluding any location where corrective action was completed which satisfies the cleanup criteria for unrestricted residential use.

Part 215 specifies how the Refined Petroleum Fund (RPF) is to be spent and states that the RPF may be used for corrective actions necessary to address releases of refined petroleum products under a cleanup program established by law following the issuance of recommendations from the Refined Petroleum Cleanup Advisory Council. The Advisory Council has

issued the first of two phases of recommendations, as directed by the statute.

In accordance with the recommendations of the Advisory Council, the bill expanded the allowable uses of the RPF to include not more than \$15.0 million for a new Refined Petroleum Product Initial Program and the Department of Environmental Quality's administrative costs associated with a new Temporary Reimbursement Program. In addition, \$45.0 million from the RPF may be used for implementation of the Temporary Reimbursement Program.

The bill delayed the sunset on the existence of the Refined Petroleum Cleanup Advisory Council from August 1, 2006, to December 31, 2006. Additional recommendations were anticipated from the Council regarding the Refined Petroleum Cleanup Program, appropriate limitations on administrative costs, and updates to obsolete provisions of Part 215.

### **House Bill 6047**

#### **Program Establishment**

The bill requires the DEQ to establish a Refined Petroleum Product Cleanup Initial Program to conduct corrective actions associated with releases from petroleum underground storage tank systems. A listing of sites was included in Public Act 154 of 2005 with the DEQ FY 2005-06 appropriations act.

In accordance with the recommendations of the Advisory Council, the bill also requires the Department to establish a Temporary Reimbursement Program to promote progress toward site closure of releases by providing financial incentives for eligible persons to conduct corrective actions for those releases. Provisions of the bill related to the Temporary Reimbursement Program are described below.

#### **Administration**

The DEQ is required to administer the program and process precertification applications. The first round of applications must begin within 120 days after the bill's effective date. Notice must be given to applicable trade associations, through electronic distribution to interested parties,

and posted on the DEQ's website. Applications for the first round must be considered on a first-come, first-served basis. Not later than 210 days after the initiation date of the first round, the DEQ must determine if a second round of funding is available. If it is, that application period is to begin within 270 days after the bill's effective date.

#### **Eligibility**

For a person to be eligible for reimbursement, the pre certification application must demonstrate that the person was the owner or operator who had an approved claim under the former Michigan Underground Storage Tank Financial Assurance (MUSTFA) program, that the release for which the claim was obtained had not been closed, that the site was classified as a Class 1 or Class 2 site prior to May 9, 2005, and that the applicant is currently in compliance with registration and fee requirements of underground storage tank regulations. A person may submit more than one application if the individual possess more than one approved claim meeting the eligibility requirements. Applications must be received within 180 days of the initiation date of the application period. The DEQ may not approve more than 900 precertification applications.

Eligible persons will have 540 days (about 18 months) after approval of the application to perform corrective action. Only corrective action costs incurred during this time period may be reimbursed. Eligible persons may receive a maximum reimbursement of \$50,000 for each approved precertification application. Reimbursement claims must be accompanied by work invoices and must be larger than \$5,000, except for the last reimbursement request. Eligible persons are to receive reimbursement of 80% of the amount of each work invoice, with the remaining 20% considered the co-pay. Corrections actions must conform to the requirements in law.

The application process, eligibility requirements, and administration for a second round of precertification applications are the same as for the first round. Applications will be due 30 days after the initiation date of the second round. Applications for the second round must be considered on a first-come, first-served

basis, except that priority must be given to persons who did not receive approval in the first round. Second priority must be given to persons who received precertification application approval in the first round and then submitted another application for a different site in the second round. Any funds remaining after the first and second round of applications must be distributed on a prorated basis among all the applicants.

### **House Bill 6202**

The bill contains additional provisions to implement the Temporary Reimbursement Program created in House Bill 6047.

#### Competitive Bidding

An eligible person is required to retain a consultant to perform the corrective action, and the consultant must choose contractors through a competitive bidding process. Competitive bidding must be used to hire contractors for the following activities: well drilling, laboratory analysis, construction of treatment systems, removal of contaminated soil, and operation of treatment systems. Bids must be submitted to the consultant, who must submit all the bids to the DEQ and notify the DEQ of the bid accepted. A consultant may perform these work activities only if the consultant also submits a bid in the competitive bidding process to the DEQ before receiving other bids from contractors. The owner or operator may hire contractors directly, after the consultant employs the competitive bidding process. Removal of underground storage tank systems and installation of new or upgraded equipment for purpose not related to underground storage tank corrective actions are not eligible for reimbursement under the Temporary Reimbursement Program.

#### Reimbursement Procedures

In order to receive money under the Reimbursement Program, an eligible person and the consultant must follow the procedures described in bill, submit reports and other information requested by the DEQ, and submit complete work invoices on standardized forms. The reimbursement requests must be for at least \$5,000, except for the last request.

The DEQ must determine whether the work performed is necessary and appropriate for the site and eligible for reimbursement, whether the cost is reasonable, whether the person is eligible for funding, and whether the consultant has complied with the competitive bidding process. The DEQ must deny the payment of a work invoice if the corrective action is not consistent with leaking underground storage tank cleanup statute or this program. If payment is approved, the DEQ must forward a payment voucher to the State Treasurer within 45 days after approval of the work invoice.

Payments must be made jointly to the eligible person and the consultant, unless the eligible person submits an affidavit that the consultant had already been paid in full. The DEQ is not required to verify the affidavit. The Temporary Reimbursement Program is subject to Section 21548, which establishes criminal and civil penalties for knowingly making a false statement or request for payment. The State Treasurer may withhold payment if there is reasonable cause to believe false statements have been made or that corrective actions are not complete.

An approved precertification application may be transferred to a new property owner, who becomes the eligible person for purposes of the Temporary Reimbursement Program. Previous payments made for that application must be counted toward the reimbursement amount of the new owner. Notification to the DEQ is required for the transfer of the application.

If the DEQ denies an application, the applicant has 14 days to request a review by the Department. The DEQ must forward the request to the Temporary Reimbursement Program Advisory Board, which must review the application and submit a recommendation to the DEQ. Not later than 21 days after review by the Advisory Board, the DEQ must make a determination on the precertification application with consideration given to the Advisory Board's recommendation. If the application is again denied, the eligible person may appeal pursuant to the Revised Judicature Act.

#### Advisory Board

The bill creates the Temporary Reimbursement Program Advisory Board to

conduct reviews of denied work invoices upon the request of eligible persons and advise the DEQ on implementation of the program. The Advisory Board must have seven members: three members appointed by the Governor, two appointed by the Speaker of the House, and two appointed by the Senate Majority Leader. Each member must serve a term of three years and a vacancy must be filled in the same manner as the original appointment. A meeting of the Board may be called by the chairperson or by at least three members of the Board. A majority of the members constitutes a quorum and action by the Board must be by a majority of the votes cast. The Board is subject to the Open Meetings Act. A member of the Board must abstain from voting on any matter in which the member has a conflict of interest.

The DEQ may submit the competitive bidding process to the Board for its review and the Board may convene a peer review panel for this purpose. If the Board finds that the practices of a consultant are inappropriate, then it may recommend the revocation of the consultant's certification.

#### Program Cessation

The Temporary Reimbursement Program will cease upon payment of all approved work invoices and resolution of all appeals. Unspent funds will be available for future appropriation from the Refined Petroleum Fund.

MCL 324.21502 et al. (S.B. 1260)  
324.21553-21557 (H.B. 6047)  
324.21558-21563 (H.B. 6202)

#### **FISCAL IMPACT**

The bills will cost the State a total of \$60.0 million from the Refined Petroleum Fund, of which \$15.0 million will be spent for the Refined Petroleum Product Cleanup Initial Program and administrative costs incurred by the DEQ for the Temporary Reimbursement Program, and \$45.0 million will be spent for the Temporary Reimbursement Program. These amounts were appropriated in FY 2005-06 for these purposes and had not been spent since statutory changes were necessary to authorize expenditures from the Refined Petroleum Fund for these purposes.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.