Legislative Analysis

Mary Ann Cleary, Director
Phone: (517) 373-8080
http://www.house.mi.gov/hfa

LEAKING UNDERGROUND STORAGE TANKS

Senate Bill 528 (Substitute S-2)
Sponsor: Sen. Tom Casperson

Senate Bill 529 (Substitute S-2)
Sponsor: Sen. Darwin L. Booher

Senate Bill 530 (Substitute S-2)
Sponsor: Sen. Phil Pavlov

Senate Bill 531 (Substitute S-2)
Sponsor: Sen. Arlan Meekhof

Senate Bill 532 (Substitute S-2)
Sponsor: Sen. Mike Kowall

Senate Bill 533 (Substitute S-1)
Sponsor: Sen. Mike Green

House Committee: Natural Resources, Tourism, and Outdoor Recreation
Senate Committee: Natural Resources, Environment, and Great Lakes

Complete to 3-5-12

A SUMMARY OF SENATE BILLS 528-533 AS PASSED BY THE SENATE 1-24-12

The package of bills would alter the procedure for the cleanup of contamination caused by leaking underground storage tanks (LUST). A more detailed description of each bill follows below.

Senate Bill 528 (S-2) would amend Part 213 (Leaking Underground Storage Tanks) of the Natural Resources and Environmental Protection Act (NREPA) to change procedures for the cleanup of contamination caused by leaking underground storage tanks (LUST). The standards are based on the American Society for Testing and Materials (ASTM) Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites (RBCA). Among other things the bill would do the following:

- Require LUST sites to be classified consistent with the process outlined in RCBA and delete a requirement that the Department of Environmental Quality (DEQ) establish a classification system considering impacts on public health, safety, and welfare, and the environment.
- Allow the DEQ to audit only final assessment and closure reports.
- Require the DEQ to determine if it will audit a report within 90 days and establish a 180-day time frame for completion.
- Allow the DEQ 270 days after the bill takes effect to selectively audit reports submitted within six months before the bill's effective date.
- Only allow the DEQ to audit a report once.
- Consider a report approved if the DEQ did not perform an audit and provide a written response to the owner or operator.
- Allow a denied report to be revised and resubmitted for approval; the owner could petition the Response Activity Review Panel under Part 201 for review, or

petition the DEQ's Office of Administrative Hearings for a contested case hearing.

- State that an owner or operator that was responsible for a release or threat of release would be liable under Part 213.
- Provide that a person who became an owner or operator on or after June 5, 1995, would be liable under Part 213 unless the person conducted a baseline environmental assessment.
- Provide exemptions from liability.
- Provide that a person who desired to change land use or resource use restrictions specified in a closure report would be responsible for any necessary additional corrective action.
- Provide that an owner or operator whose corrective action failed to meet performance objectives would be liable for the corrective action needed to satisfy the objectives.
- Provide that the DEQ bears the burden of proof in establishing liability under Part 213.
- Authorize the Attorney General to bring an action to abate an imminent and substantial endangerment to the public health, safety, or welfare, or the environment.
- Establish joint and several liability for a liable person.
- Provide for the apportionment of liability in the case of two or more liable people acting independently.
- Allow a person to seek contribution from any other liable person during or after a civil action.
- Limit the maximum liability for a release or threat of release to the total of all costs of corrective action and fines, plus $50 million in damages injury to, destruction of, or loss of natural resources.
- Allow the state to give a person a covenant not to sue concerning liability to the state, including future liability, resulting from a release or threatened release addressed by corrective action, whether that action is on or off the property on which an underground storage stand system is located, if (1) the covenant is in the public interest, (2) the covenant would expedite corrective action consistent with promulgated rules, (3) there is full compliance with a consent order, (4) and the corrective action has been approved by the DEQ.
- Authorize the DEQ and the Attorney General to enter into a consent order with a liable person to perform corrective action, provided certain conditions are met.
- Allow a person, including a local unit of government, whose health or enjoyment of the environment was adversely affected by a release from an underground storage tank, a violation of Part 213, or a failure to perform a nondiscretionary act or duty, to begin a civil action against an owner or operator liable for injunctive relief, an individual liable for a violation of Part 213 or a promulgated rule, or one or more of the directors.
- Limit the time period for filing actions under Part 213.
- Provide that all unpaid costs and damages for which a person was liable would constitute a lien in favor of the state upon property that the person owned and was the subject of corrective action by the state.

- If the lien were insufficient to protect the state's interest in recovering corrective action costs, authorize the Attorney General to petition the court for a lien that would take priority over all other liens and encumbrances that were recorded on the property, and/or a lien upon the person's other real or personal property.
- Eliminate various references to a consultant retained by an owner or operator, and instead require an owner or operator to employ a qualified UST consultant, and establish consultant qualifications (Section 21325).

Senate Bill 529 (S-2) would amend Parts 201, 213, and 215 of NREPA to do the following:

- Permit an individual that submitted an initial assessment, final assessment, or closure report under Part 213 to appeal a decision by the DEQ regarding a technical or scientific dispute by petitioning the director of the department.
- Require that at least three of the five members of a Response Activity Review Panel meeting about a dispute involving an underground storage tank system must have relevant experience in the American Society for Testing and Materials Risk-Based Corrective Action process.
- Permit an owner or operator to petition the DEQ for a contested case hearing to resolve disputes regarding the following:
    - Proposed, commenced, or completed corrective action
    - SSTLS proposed for the site
    - Imposition of penalties
    - Results of any audit
    - Placement or removal of placards on an underground storage tank system
    - Issuance of an administrative order
    - Request for information by the DEQ

The bill would also repeal sections of NREPA that require the DEQ to prepare an annual list of qualified underground storage tank consultants, establishing consultant qualifications, and require the DEQ to certify underground storage tank professionals who met specific requirements. [As stated above, Senate Bill 528 would establish requirements for qualified underground storage tank consultants.]

Senate Bill 530 (S-2) would amend Part 213 of NREPA to do the following:

- Require an owner or operator to submit an initial assessment report to the department within 180 days after a release was discovered. Currently, it must be done within 90 days.
- Revise the information that must be included in an initial or final assessment, or closure report.
- Prohibit the department from requiring a report to include information beyond that specified in Part 213 of NREPA.
- Require a closure report to contain signed affidavits attesting to the fact that the information in the report was complete and true, and that all corrective actions complied with the requirements of the applicable RVCA standard.

- Require a person submit closing reports to retain all related documents and date for a minimum of six years and to make them available to the department.

Senate Bill 531 (S-2) would amend part 213 of NREPA to revise various definitions of terms used throughout Part 213, and to add definitions of new terms.

Senate Bill 532 (S-2) would amend Part 213 of NREPA to authorize the Attorney General (on behalf of the DEQ) to begin a civil action seeking declaratory judgment on liability for future corrective action costs, and eliminate a provision allowing an individual that is fined for failing to submit a report by the prescribed deadline to appeal to the circuit court.

Additionally, the bill would delete provisions allowing an individual that was issued an administrative order and believes the order is arbitrary and capricious to petition the DEQ for reimbursement of costs incurred, and file an action against the DEQ in court if the DEQ refuses to grant the petition. Instead, the individual would have the option to file a petition to resolve any disputes with the DEQ related to the order.

Senate Bill 533 (S-1) would amend Part 213 of NREPA to prohibit the DEQ from promulgating rules to implement Part 213, beginning on the bill's effective date, and provide that a DEQ guideline, bulletin, interpretive statement, operational memorandum, or form with instructions published under Part 213 would be advisory in nature and could not be given the force of law.

All of the bills are tie-barred to each other, meaning none can take effect unless all of them are signed into law.

FISCAL IMPACT:

These bills would make changes to the Leaking Underground Storage Tank (LUST) program and would have an indeterminate fiscal impact on the Department of Environmental Quality.

The LUST Program within the DEQ regulates the cleanup of contamination resulting from leaking underground storage tanks in Michigan. When the Underground Storage Tank programs were created in Michigan 25 years ago, approximately 21,800 releases from underground storage tanks (USTs) that stored petroleum products were discovered. Since that time, 12,750 of these storage tanks with "releases" have been cleaned up and closed. However, there are still approximately 9,100 releases at an estimated 7,100 sites in Michigan that still need the necessary corrective action taken to address contamination.

The Department estimates that the average cost per cleanup per site is approximately $400,000. About half of these 9,100 releases have no liable party - which means the State of Michigan is responsible for their cleanup. Overall the total cost to the State to remediate these sites for which the State has responsibility is estimated to be $1.8 billion.

In Fiscal Year 2011-12, the DEQ budget appropriates $20.0 million funding from the Refined Petroleum Fund to directly fund these cleanups.

SB 528

Senate Bill 528 (S-2) would reduce the number of audits that the Department is required to make. In addition, the bill may reduce fee revenue to the Department by an unknown amount. Section 21315(7) reduces the amount of the fee an owner or operator is required to pay to petition for a review of a denied final assessment report or closure report from $3,500 to $300. The bill may increase costs to the Attorney General because of the provisions that the Attorney General is given the responsibility to enter into consent orders or bring legal actions against liable parties in certain cases.

SB 529

Senate Bill 529 (S-2) would allow owners or operators of USTs to petition for a contested case hearing to resolve disputes on issues such as corrective actions, penalties, audits, administrative orders, and information requests. Depending upon how many cases would go through this administrative hearing process, the Department may incur additional administrative costs under these provisions of the bill.

SB 533

Senate Bill 533 takes away the authority of the DEQ to promulgate rules to implement Part 213 of NREPA and prohibits the use of guidelines, bulletins, interpretive statements, or operational memorandum to be given the force and effect of law. While the bill's provisions would save the Department any future costs of promulgating rules in this area, the bill's fiscal impact overall on the Department is indeterminate.

Legislative Analyst: Jeff Stoutenburg
Fiscal Analyst: Viola Bay Wild