

# Cleanup Standards

*“Land use-based cleanup criteria have decreased cleanup costs and allow better definition of the costs.”*

*City of Kalamazoo*

Yet another change brought about by the 1995 amendments to the state cleanup law was the creation of risk-based cleanup criteria linked to land use. This change helps assure that cleanups can be conducted in a safe but flexible and cost-effective manner. The risk-based system takes into account the fact that the use of a property dictates the type of exposures that will occur, and that risk depends on exposure. For example, industrial sites do not have children present, and workers spend only a portion of the day at the workplace. Because of these differences in exposure, different levels of cleanup can be allowed at residential, commercial, and industrial sites while still providing the same degree of protection. Site-specific cleanups allow DEQ and property owners to account for special circumstances at a site.

## **FOR MORE INFORMATION**

The DEQ Environmental Response Division (ERD) is committed to working with owners, operators, and purchasers of contaminated sites to facilitate the cleanup and redevelopment process.

Visit our Michigan Brownfield Web Site at:

[www.deq.state.mi.us/erd/brownfields](http://www.deq.state.mi.us/erd/brownfields)

or our DEQ/ERD web page:

[www.deq.state.mi.us/erd](http://www.deq.state.mi.us/erd)

You may also want to connect with appropriate DEQ/ERD staff to discuss your site specifically.

([www.deq.state.mi.us/erd/distmap/distoff.html](http://www.deq.state.mi.us/erd/distmap/distoff.html))

If you would like to receive electronic e-mail notices of any new or updated documents we post on our Web Site, subscribe to the DEQ/ERD Listserv at

[www.deq.state.mi.us/  
dept/listserv.html](http://www.deq.state.mi.us/dept/listserv.html)

# *environmental* **REMEDIALTION LAW**



Michigan Department of Environmental Quality  
Environmental Response Division

John Engler, Governor • Russell J. Harding, Director

## Part 201

*“The amendments helped expedite projects that have been pending for years.”*

*City of Petoskey*

Michigan's environmental cleanup law is known as Part 201 (Environmental Remediation) of the Natural Resources and Environmental Protection Act (1994 PA 451). Amendments to the law in 1995 made Part 201 an ideal tool for returning brownfield sites to productive use quickly and economically, while protecting the health and safety of our citizens and our natural resources. Key components of what many consider the nation's best brownfield law are: 1) a causation-based liability system for owners and operators, 2) baseline environmental assessment (BEA) provisions to provide liability protection to new owners and operators, 3) due care provisions to assure contaminated property is used safely, and 4) land use-based cleanup standards.

## Liability

*“The amendments put new buyers and developers in a position to protect themselves from financial risk.”*

*City of Bay City”*

Michigan's pre-1995 environmental cleanup and redevelopment efforts were constrained by strict liability laws. Prior to 1995, if you purchased contaminated property, you purchased liability for the cleanup. This was a serious impediment to re-use contaminated property that resulted in many new development projects going to undeveloped land. Many contaminated sites sat idle for decades. Since passage of the 1995 amendments however, only persons who cause the contamination are responsible for the cleanup. Still, there are things new owners and operators of contaminated property DO NEED TO DO, namely: 1) perform a BEA, and 2) exercise due care.

## BEA

*“The BEA puts potential developers at ease.”*  
*City of Battle Creek*

A Baseline Environmental Assessment (BEA) is a simpler, streamlined alternative to the Covenant Not to Sue liability protection tool used in the past. A BEA is used to gather information about a contaminated property which is changing ownership and/or use so existing contamination can be distinguished from any that might occur once a new owner or operator acquires the property. To take advantage of the liability protection under Part 201, a new owner or operator must: 1) conduct an adequate BEA prior to or no more than 45 days after the date of purchase, foreclosure, or becoming the operator, whichever occurs first; AND 2) disclose the results of the BEA to the Michigan Department of Environmental Quality (DEQ) and subsequent purchasers and lessee operators. While completing a BEA can give you liability protection for existing contamination you didn't cause, you must remember that you still have "due care" obligations.

## Due Care

*“The amendments refocused and broadened our efforts toward redeveloping brownfields... and away from other ventures such as industrial park creation as the only objective.”*

*City of Owosso*

New owners of contaminated property do not have to completely remediate all on-site contamination before putting brownfield properties back into productive use. They do, however, need to perform "due care" activities. These actions are necessary to ensure their use of the property: 1) does not allow an unacceptable exposure to contamination, 2) does not worsen the contamination, and 3) protects against the reasonably foreseeable actions of third parties such as trespassers. Due care principles apply to all owners of contaminated property.