

Avoiding BEA Processing Delays

BEAs are intended to foster the redevelopment and reuse of contaminated properties (known as brownfields) by preventing innocent new owners or operators from being held liable for preexisting contamination they did not cause at a facility. BEAs are an evaluation of the environmental conditions existing on a parcel of property at the time of purchase, occupancy, or foreclosure. The BEA must reasonably define the existing conditions at the location so that in the event of another release, there is a means of distinguishing the new release, if any, from existing contamination.

Part 201, Environmental Remediation of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Part 201), regulates sites of environmental contamination in Michigan. Given below are some general requirements applying to BEAs.

- BEA rules require specific time frames to be followed regarding assessments;
- To be eligible for a BEA, the property must be a "facility" as defined by Part 201;
- The BEA must be conducted either prior to or within 45 days of becoming the new owner or operator and completed within 60 days;
- A BEA must be submitted to the DEQ within time frames specified below and provided to any subsequent purchaser or transferee of the property;
- The owner or operator can submit the BEA to the DEQ with a request for review and written response on its adequacy (a petition) or without a request for DEQ review (a disclosure);
- Petitions must be submitted to the DEQ within six months of completion of the BEA along with a \$750 fee;
- Disclosures must be submitted to the DEQ within eight months of becoming the owner or operator (no fee);
- Time frames for oil and gas production properties are different from what is stated above; details can be found in the BEA Rules and Instructions.

The following information will assist in avoiding delays in the processing and preparation of BEAs:

Petition Forms and Affidavits

- Petition forms and affidavits are available electronically in [Microsoft Word format](#).
- Affidavits cannot be signed and notarized before the date of BEA completion specified in the affidavit.

Documentation that the Property is a Facility

- The BEA must reflect the condition of the property at the time of sale using current data and compared to the current Part 201 criteria demonstrating that appropriate generic residential cleanup criteria are exceeded.
- Sites that have been closed under a generic residential remedial action plan do not meet the definition of a facility unless new environmental information shows that applicable criteria are exceeded.

Future Hazardous Substance Use and Site Characterization

- Evaluations of potential hazardous substance use by the new owner or operator must consider the processes to be used; raw and waste materials; maintenance of equipment, building and grounds; fluids in equipment; fuels; etc.
- Adequate characterization and sampling data for the same hazardous substances that will be used onsite in the future are necessary.
- Material Safety Data Sheets (MSDS) are very helpful, but sometimes more detail is needed.
- Insignificant hazardous substance use is equivalent to what a typical residence or office would use.

Conclusions

- Sufficient details on how the BEA will be used to differentiate between old contamination and a new release must be provided in such a way that someone reading the BEA in five years will know what to do in the event of a release.
- Conclusions for Category D BEAs must stipulate that the significant hazardous substance use will be different from the existing contamination and explain why the data is sufficient to support that stipulation.
- Conclusions for Category N BEAs must be exactly as stated in Rule 907(2)(h).
- Conclusions for Category S BEAs must be very specific and include details on how the data will be used to differentiate a new release. Information on what steps need to be taken at the time of a new release, what analytical testing methods must be used, what comparisons should be made, and how to use the data, etc., are required.
- If engineering controls or isolation zones are used, they must cover the entire area of existing contamination, not just the areas where the new hazardous substances will be stored.
- Please note that BEAs for underground storage tanks (regulated by the Storage Tank Division of the DEQ) have different requirements for engineering and isolation controls. Both the petitioner's and environmental consultant's affidavits must contain the appropriate stipulated language from Rule 909. Modifications to this language must have prior DEQ approval.

The instructions, rules, and forms can be downloaded from this [BEA website](#), or they can be obtained at any DEQ district office. For site-specific questions, please contact the DEQ [district office](#) that serves the county where the property is located.