

IMPORTANT NOTICE for Baseline Environmental Assessments (BEAs)

Effective December 14, 2010, the amendments to Part 201 have changed the BEA process. All BEAs received after this date must use the new form and comply with the new requirements.

1. The BEA report will consist of an All Appropriate Inquiry (AAI) in compliance with 40 CFR 312, sufficient sampling and analysis to confirm the property is a facility as defined by Section 20101(1)(r), and documentation of the property identification. The former requirements to identify the future hazardous substance use and to provide a means to differentiate a new release of that hazardous substance from existing contamination have been eliminated from the BEA process. A person may still want to establish a means to distinguish a new release, but that will be a business decision rather than a BEA requirement. The new BEA submittal form lists the contents for the new BEA report. The form is available on the DNRE web page (www.michigan.gov/bea).

2. The Part 201 amendments allow the AAI to be conducted either prior to or within 45 days of becoming the owner, operator, or foreclosure. This does not change the CERCLA requirement to conduct the AAI prior to purchase. The amendments specifically require AAI, however EPA has ruled that the ASTM Phase I Environmental Site Assessment (ESA) is acceptable for compliance with AAI, therefore, either an AAI compliant report or ASTM Phase I ESA (E1527-05) compliant report will be acceptable for the BEA process. The AAI or Phase I ESA must consider all releases or threatened releases of hazardous substances as defined by Section 20101(1)(x).

3. All BEAs must be submitted to the DNRE with the new BEA submittal form within 6 months of the earlier of the date of purchase, becoming the owner, or foreclosure. The requirement to disclose the BEA to future purchasers or transferees remains in effect. The new BEA submittal form is available on the DNRE web page (www.michigan.gov/bea).

4. The Part 201 amendments eliminate the petition process. It will no longer be an option to request a written determination of the technical adequacy of a BEA. BEA petitions that are still in process as of the effective date of the amendments will be changed to BEA submittals and the \$750 fee returned. Section 20107a Compliance Analyses that are still in process as of the effective date will not be reviewed.

5. The BEA rules regarding future hazardous substance use, category, technical requirements, and petitions will no longer apply. The BEA Rules (R299.5901 to R299.5919) are no longer effective with the exception of subrules (2), (6), (8), and (9) of Rule 903, subrules (2) through (6) of Rule 905, and all of Rule 919.

6. The BEA Instructions dated March 11, 1999, and the forms for affidavits, petitions, engineering controls, and curing deficiencies are no longer applicable. The Citizen's Guide for BEAs, the Citizen's Guide for Due Care, and the Citizen's Guide for What You Need to Know If You Own or Purchase Property with Environmental Contamination, are in the process of being revised.

7. The Due Care requirements for submitting a Notice of Migration (EQP4482) or a Notice of Abandoned or Discarded Containers (EQP4476) within 45 days have not changed. Those forms are still available on the DNRE web page (www.michigan.gov/bea). Note that the Part 201 amendments require a liable party to submit a Notice of Migration within 30 days pursuant to Section 20114(2)(ii).