



Everything You Wanted to Know about Michigan's Clean Up Laws!

(and then some!)



Who We Are

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- Michigan Department of Environmental Quality
(DEQ)





Michigan's "Cleanup" Laws: Parts 201 and 213

- **Part 201:** Environmental Remediation
- **Part 213:** Leaking Underground Storage Tanks (LUST)
- RRD Goals:
 - Risk Management
 - Remediation for Redevelopment (R4R)
- Other statutory authorities for contaminated sites exist
 - 201/213 is our focus

Risk Management

- What is it?
 - Not necessarily “cleaning up” sites
 - Statutes allow for contamination to stay in place, as long as it is protective of public health and safety



How Do These Laws Affect You?

- Public property
 - Parks
 - Redevelopment sites
- Liability Issues
- Responsibilities
- Land/Resource Use Restrictions
- Disclosures
- Certifications



Liability

YOU



BLE!!!



RESPONSIBILITY

You made the mess, you clean it up

Responsibilities: Liability Under the Law

- What does it mean if a person is liable under Part 201 or 213?
 - Responsible for the response activities
 - Reimbursing state for costs



Grants and Liability

- Important to Remember!!!
- If you are considered liable under Part 201 or Part 213, you may not be eligible for brownfield redevelopment grants or loans



Liability

How can I protect myself from liability?

- **Baseline Environmental Assessment (BEA)**
 - This is the most-often used exemption
 - All-appropriate inquiry (AAI)

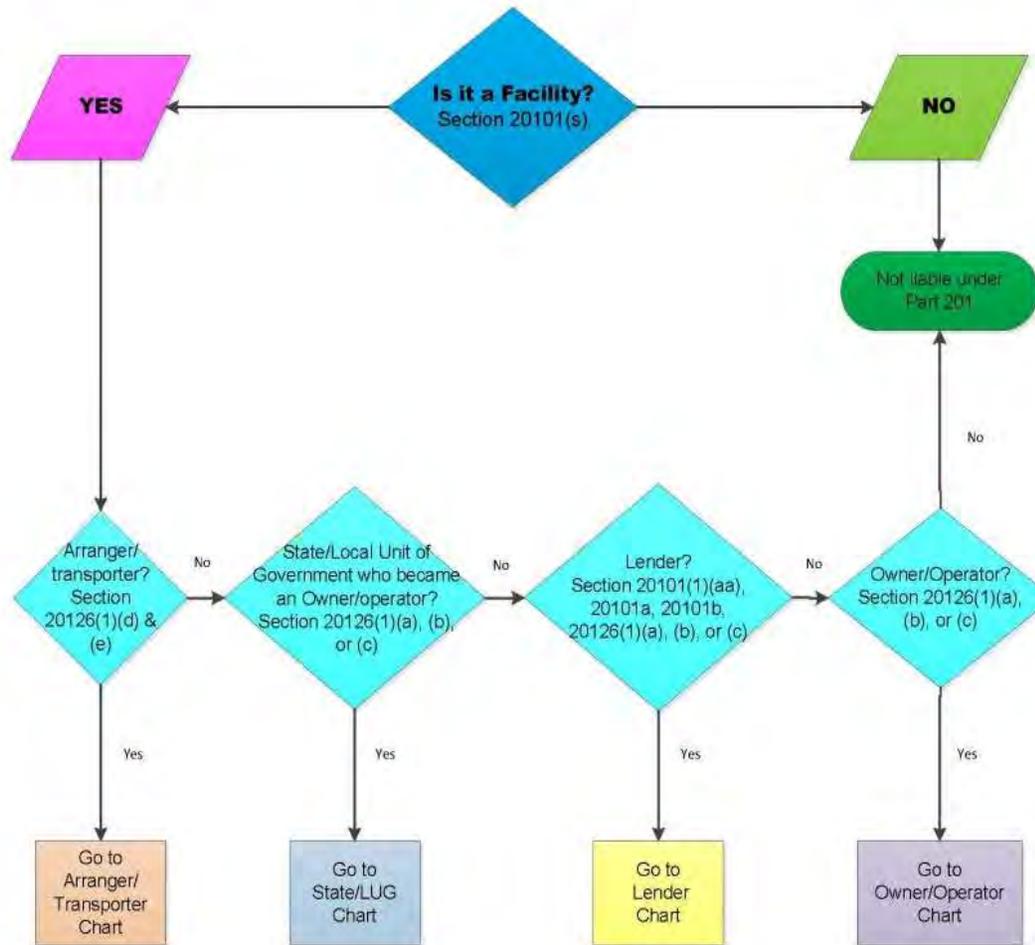




A



PART 201 LIABILITY FLOW CHART



This flow chart is just for reference. It should not be used in place of the statute. It is not intended, nor can it be relied upon, to create any rights, substantive or procedural, by any other party. Questions regarding this chart should be directed to the Compliance & Enforcement Section, Remediation and Redevelopment Division, Michigan Department of Environmental Quality, telephone, 517-373-7818.

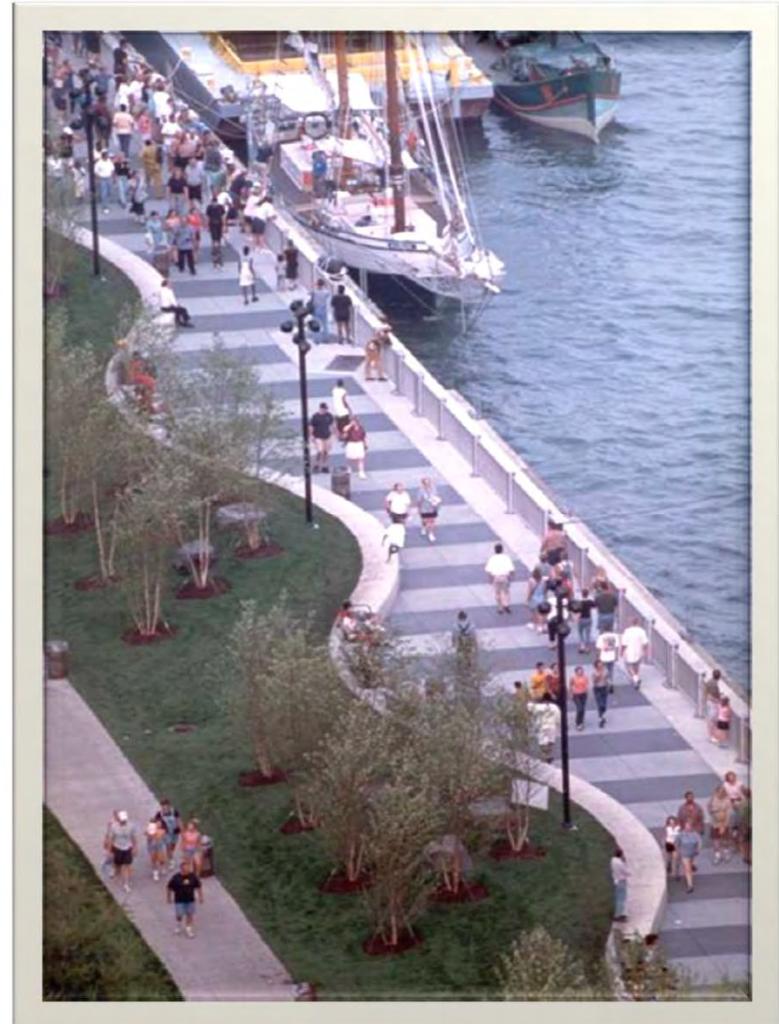
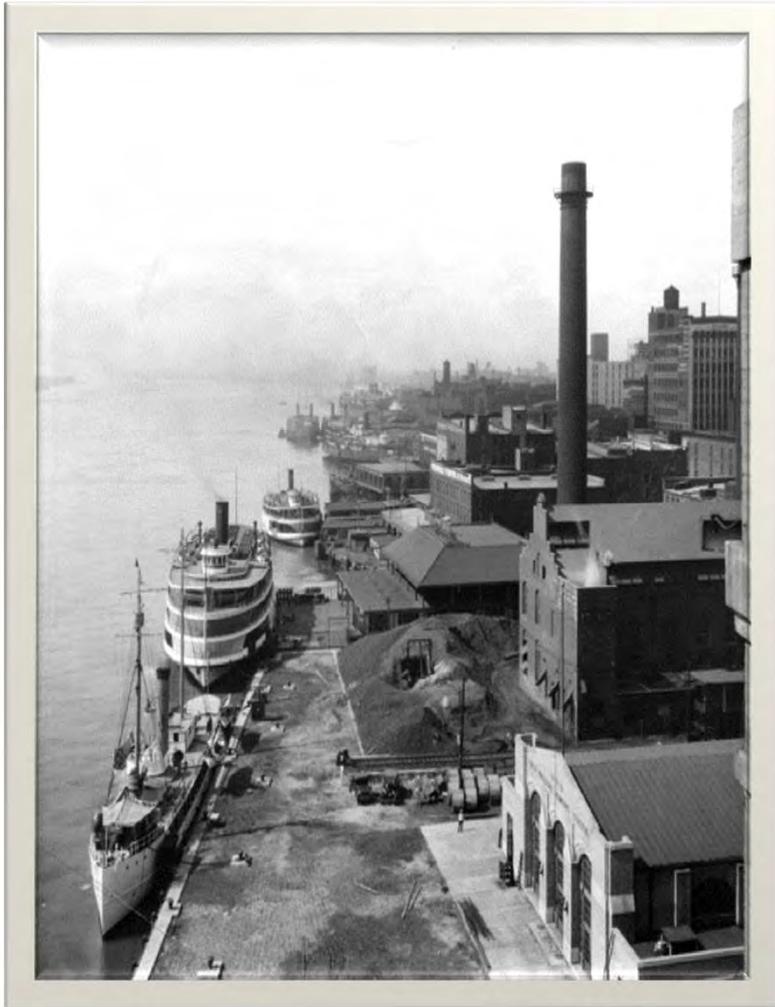


Some Exemptions

For Example:

- Not required to conduct BEA to be exempt from liability IF:
 - A LUG acquires contaminated property **involuntarily**, by operation of law, or court order
 - Transfer of property: LUG to LUG, or State to LUG
 - Migration
 - Transportation utility corridor/public right-of-way

Brownfield Redevelopment



DUE CARE



Responsibilities: What is Due Care?

- Anyone who owns or operates on property known to be contaminated has the responsibility to ensure that visitors and workers are protected from exposure to contamination
- **“Due Care”**



Responsibilities

- More specifically, **Due Care** is ensuring that existing contamination:
 - Does not cause unacceptable risk to workers or visitors
 - Is not exacerbated
- Take reasonable precautions against acts and omissions of third parties



Department of Public Works Sites





Responsibilities: Due Care

- In order to accomplish **Due Care** compliance, a person may need to:
 - Take action to protect people from contact with contamination;
 - Allow the safe use of redeveloped, contaminated property; and
 - Prevent activities that cause the spread of contamination off the property

Preventing Unacceptable Risk

A potential exists for people to be exposed to levels of contamination that may be hazardous to human health

- Examples of unacceptable risks:
 - Children playing in contaminated soil
 - People drinking from a contaminated well
 - Employees exposed to harmful vapors at work site
 - Utility workers (digging)



Exacerbation

- Doing something that causes new or more migration
- Increase in the costs of cleanup





Requirements of Due Care

- Comply with land use/resource use restrictions on the property
- Do not impede their effectiveness and integrity
- More on Land Use/Resource Use Restrictions (LRURs) later



Exemptions and Access

- Migration Exemption
 - Owner/Operator is exempt from some (but not all!) due care requirements if contamination is migrating from someone else's property
 - If a property is available for public use, then the migration exemption does not apply under 201:
 - a LUG must comply with all due care obligations for the accessible portion of the property
- Access
 - Must provide cooperation, assistance, and access to any party conducting response activities

Public Spaces



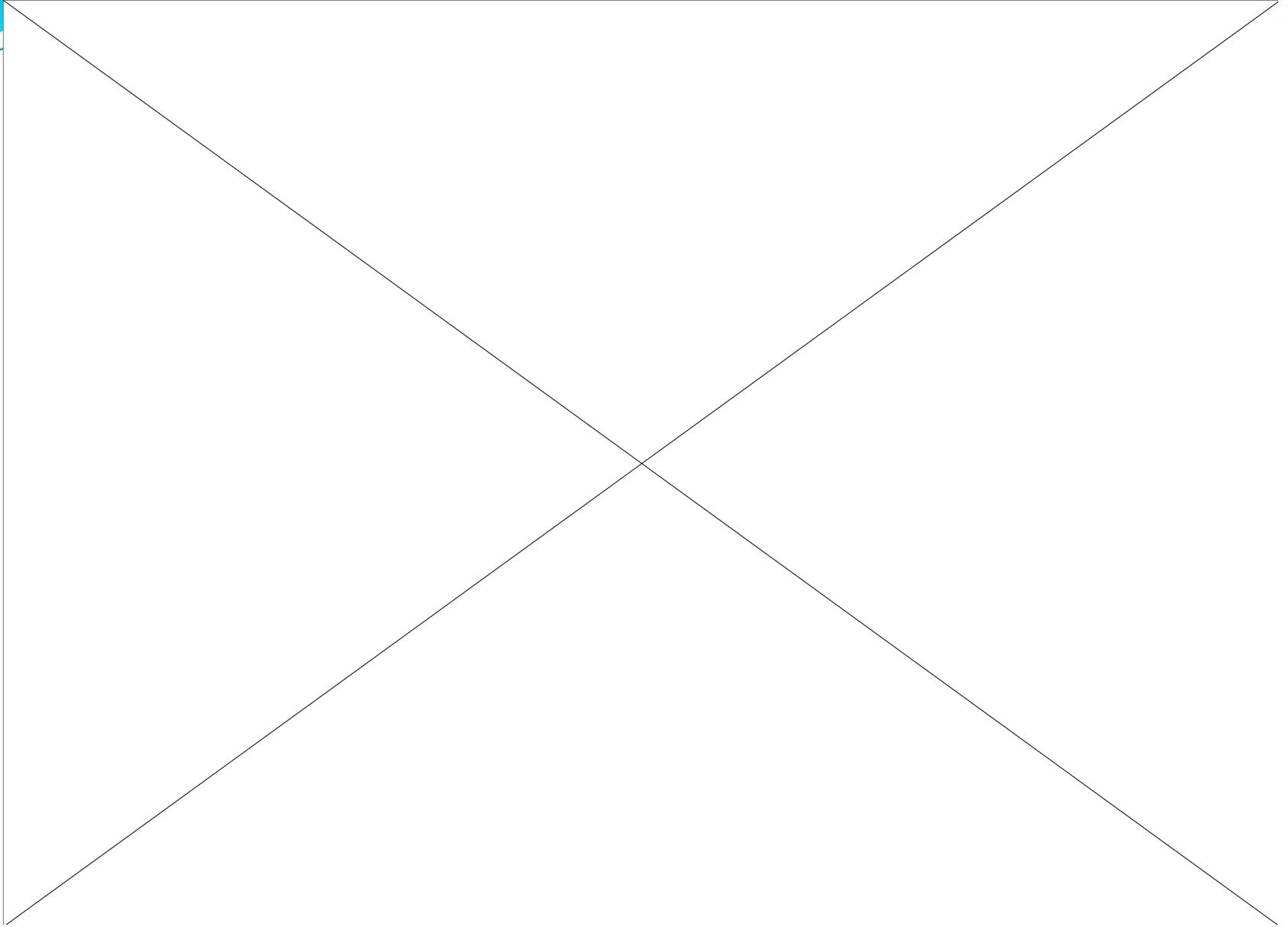


Documentation of Due Care Compliance

- Documentation is required
- Must be made available upon request by the DEQ
- You may submit documentation for DEQ review and approval
- **Compliance requirement is on-going!**

Land and Resource Use Restrictions





LRURs: What and Why?

- Manage risk by placing activity and use limitations on contaminated property
 - Reduce or restrict exposure to hazardous substances
 - Assure the effectiveness and integrity of containment or exposure barriers
 - Assure the effectiveness and integrity of response activities undertaken at the property
 - Provide for access





Identification of LRURs

- Know what applies to the property
 - Recorded instruments
 - Local ordinances and regulations
 - License agreements
 - Laws, permits, contracts
- Know what the language means

01/12/2012 01:49:29 P.M. RECEIPT# 3454

LIBER 43752 PG 375

RECEIVED
OAKLAND COUNTY
REGISTER OF DEEDS

912 JAN 12 PM 1:41

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LIBER 43752 PAGE 375
\$55.00 MISC RECORDING
\$4.00 RENOVEMENTATION
01/12/2012 01:49:29 P.M. RECEIPT# 3454

PAID RECORDED - OAKLAND COUNTY
BILL BULLARD JR. CLERK/REGISTER OF DEEDS

DECLARATION OF RESTRICTIVE COVENANT

MDEQ Reference No. RC-RD-213-11-095

This Declaration of Restrictive Covenant (Restrictive Covenant) was recorded with the Oakland County Register of Deeds to protect public health, safety, and welfare, and the environment by prohibiting or restricting activities that could result in unacceptable exposure to environmental contamination present at the property located at 2370 S. Milford Road in the east half of the northeast quarter of Section 33, T3N R7E, Highland Township, Oakland County, Michigan and legally described as Parcel 1 in the attached **Exhibit 1** (Legal Description of Property).

The Property is associated with parcel 11-33-200-003 which is the location of the Huron Valley Schools Transportation Garage Used Oil LUST - Facility ID# C-0001-08 and for which a Closure Report (CR) was completed under Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.21301 *et seq.* Corrective actions that were implemented to address environmental contamination are fully described in the CR dated January 27, 2012. A copy of the CR is available from the Michigan Department of Environmental Quality (MDEQ) Remediation and Redevelopment Division District Office.

Part 213 of NREPA requires the recording of this Restrictive Covenant with the Oakland County Register of Deeds based upon the corrective action activities for the site to: (1) restrict unacceptable exposures to regulated substances located on a specified portion of the Property; (2) assure that the use of the Property is consistent with the exposure assumptions used to develop cleanup criteria under Section 21304a(2) of the NREPA, and (3) assure the exposure control measures relied upon in the CR are effective. The restrictions contained in this Restrictive Covenant are based upon information available at the time the CR was implemented by Huron Valley Schools. Failure of the corrective action to achieve and maintain the cleanup criteria, exposure controls, and requirements specified in the CR; future changes in the environmental condition of the Property or changes in the cleanup criteria developed under Section 21304a(2) of the NREPA; the discovery of environmental conditions at the Property that were not accounted for in the CR; or use of the Property in a manner inconsistent with the restrictions described below may result in this Restrictive Covenant not being protective of public health, safety, and welfare, and the environment.

Grou

Ordinances and Your Community

Charter Township of Brighton
Livingston County

KERMIT ID# 14120114008

CHARTER TOWNSHIP OF BRIGHTON ORDINANCE NO. 261 OF 2014

AN ORDINANCE TO PROVIDE FOR THE REGULATION AND RESTRICTION OF GROUNDWATER WELLS IN CERTAIN AREAS IN THE CHARTER TOWNSHIP OF BRIGHTON

THE CHARTER TOWNSHIP OF BRIGHTON ORDAINS:

SECTION 1 FINDINGS

MDEQ REF# ORD-RRD-201-14-008

The purpose of this ordinance is to provide for the protection of the public health, safety and welfare in connection with the use of groundwater within certain portions of the Township. The Township Board of the Charter Township of Brighton, through consultation with other authorities, including the Michigan Department of Environmental Quality and the Livingston County Health Department, has determined that contaminated groundwater within a Restricted Zone, as defined in Section 2 hereof, may be unsafe for consumption or certain other uses. The Township Board of the Charter Township of Brighton further recognizes that the protection of the residents of the Township from contaminated groundwater, which may be injurious to human health, may in certain cases be fostered by the adoption of prohibitions or restrictions in certain areas with regard to the installation and/or use of wells.

SECTION 2. DEFINITIONS

For the purposes of this Ordinance, the words and phrases listed below shall have the following meanings:

- A. "Affected Parcel" means a parcel of land or any part of which is located within a Restricted Zone.
- B. "Applicant" means a person who applies or applied for the establishment of a Restricted Zone pursuant to this Article and any successors.



Road Right-of-Way



MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY – REMEDIATION AND REDEVELOPMENT DIVISION
PO BOX 30426, LANSING, MI 48909-7926, Phone 517-284-5087, Fax 517-241-9581

ROAD RIGHT-OF-WAY ALTERNATE INSTITUTIONAL CONTROL

When environmental contamination is proposed to remain in place within a road right-of-way (ROW) owned or controlled by a local unit of government (LUG), tribal government, or other authority, except the Michigan Department of Transportation, the "Road Right-of-Way Alternate Institutional Control" may serve as an alternate institutional control pursuant to Section 20114d(5)(a) of Part 201, Environmental Remediation, or Section 21310a(4) of Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA). Acceptance of this institutional control by the LUG or other road ROW authority is discretionary and voluntary. Furthermore, the LUG or other road ROW authority may require approval of certain permits, license agreements, or financial bonding that may be necessary for the road ROW as a condition of their authorization of this alternate institutional control mechanism. The party proposing to use the road ROW alternate institutional control (AIC) shall complete Sections 1 through 4. If any underlying fee simple title ownership interests exist in the affected road ROW, the submitter shall obtain consent, as appropriate, of all parties in Section 3. The LUG, tribal government, or other authority that owns or controls the affected road ROW, except the Michigan Department of Transportation, shall complete Section 5. The party proposing this AIC shall submit the completed form and all attachments with a No Further Action Report pursuant to Part 201 or a Final Assessment Report or Closure Report pursuant to Part 213 to the appropriate District Office. The MDEQ Reference Number can be obtained by contacting the Remediation and Redevelopment Division at deq-rrd@michigan.gov or by calling 517-284-5153.

SECTION 1 SUBMITTER INFORMATION

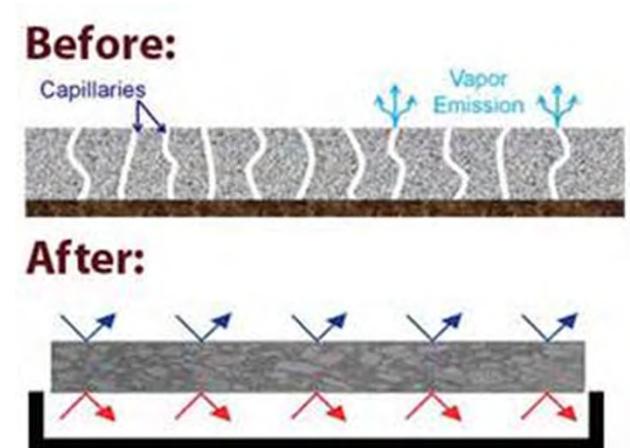
MDEQ REFERENCE NUMBER: RC-RRD-213-14-0183

SITE OR FACILITY ID NUMBER: 0025082



Compliance with LRURs

- Comply with restrictions
 - Restrictions on land use (no residential)
 - Groundwater use prohibition
 - Restriction on building use or construction
- Perform obligations
 - Maintain integrity of barrier
 - Maintain fence to limit access



Governmental Functions

- May have responsibilities related to governmental functions
 - Enactment of LRURs
 - Monitoring compliance
 - Enforcement



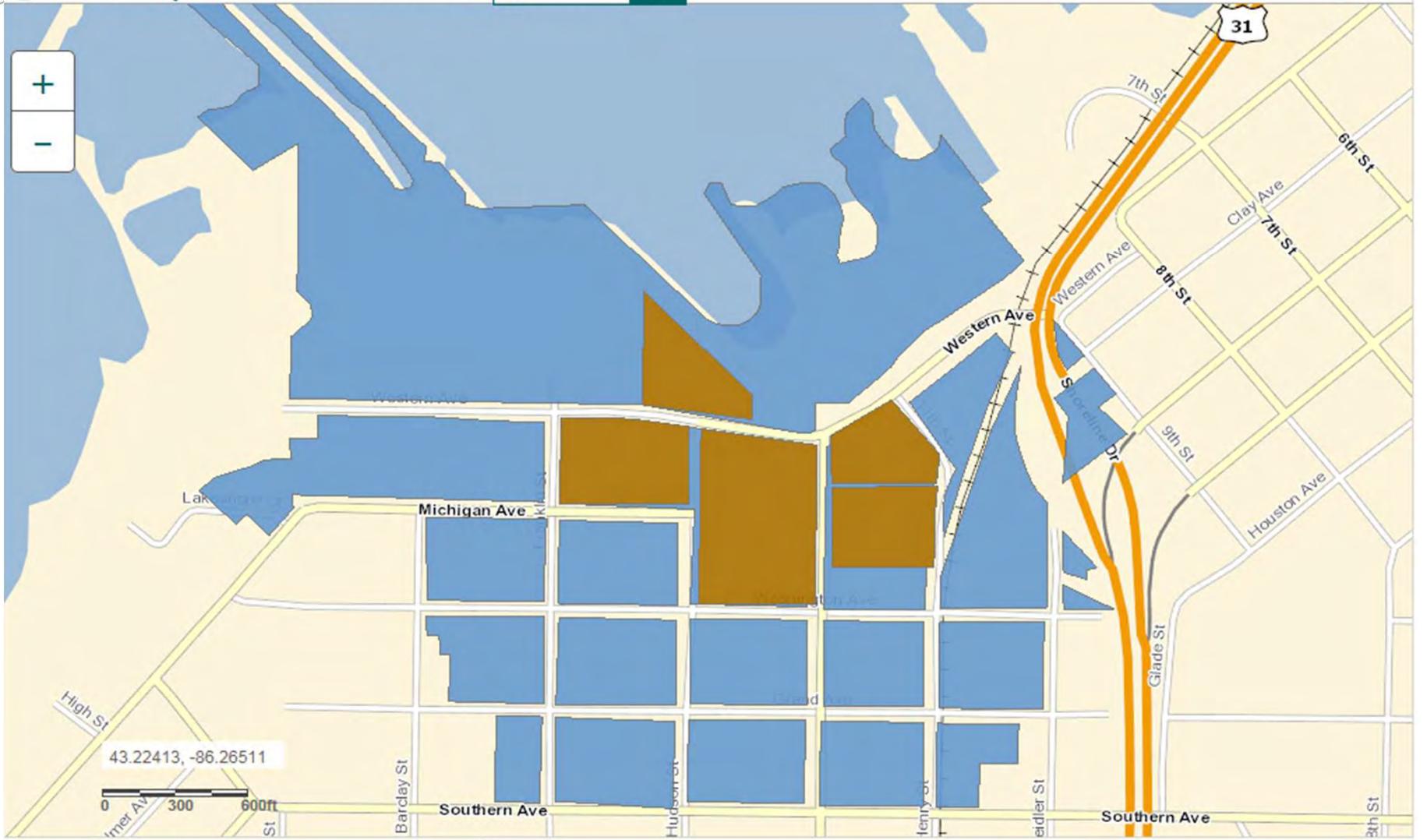
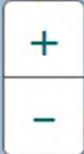
Clear Map

Map Zooms

Map Quick Keys

Site Details Active

Print



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More Important Things to Remember





Planning and Implementation LRURs

- The DEQ wants to partner with you!
- LRURs should not only meet the needs of the specific site, but should meet the needs of the community
- A cooperative relationship should be established **early** between the DEQ, the entity performing response activities, and your community



LRURs: More Info

- LRUR information may be obtained at:
 - County Register of Deeds Office
 - Your DEQ District Office
 - Michigan Department of Transportation
 - County Health Department or County Road Commission
 - Local Municipality's Department of Public Works or Planning Commission
 - Owner/operator of contaminated property
 - DEQ's Environmental Mapper
 - <http://www.mcgi.state.mi.us/environmentalmapper/>

Disclosures

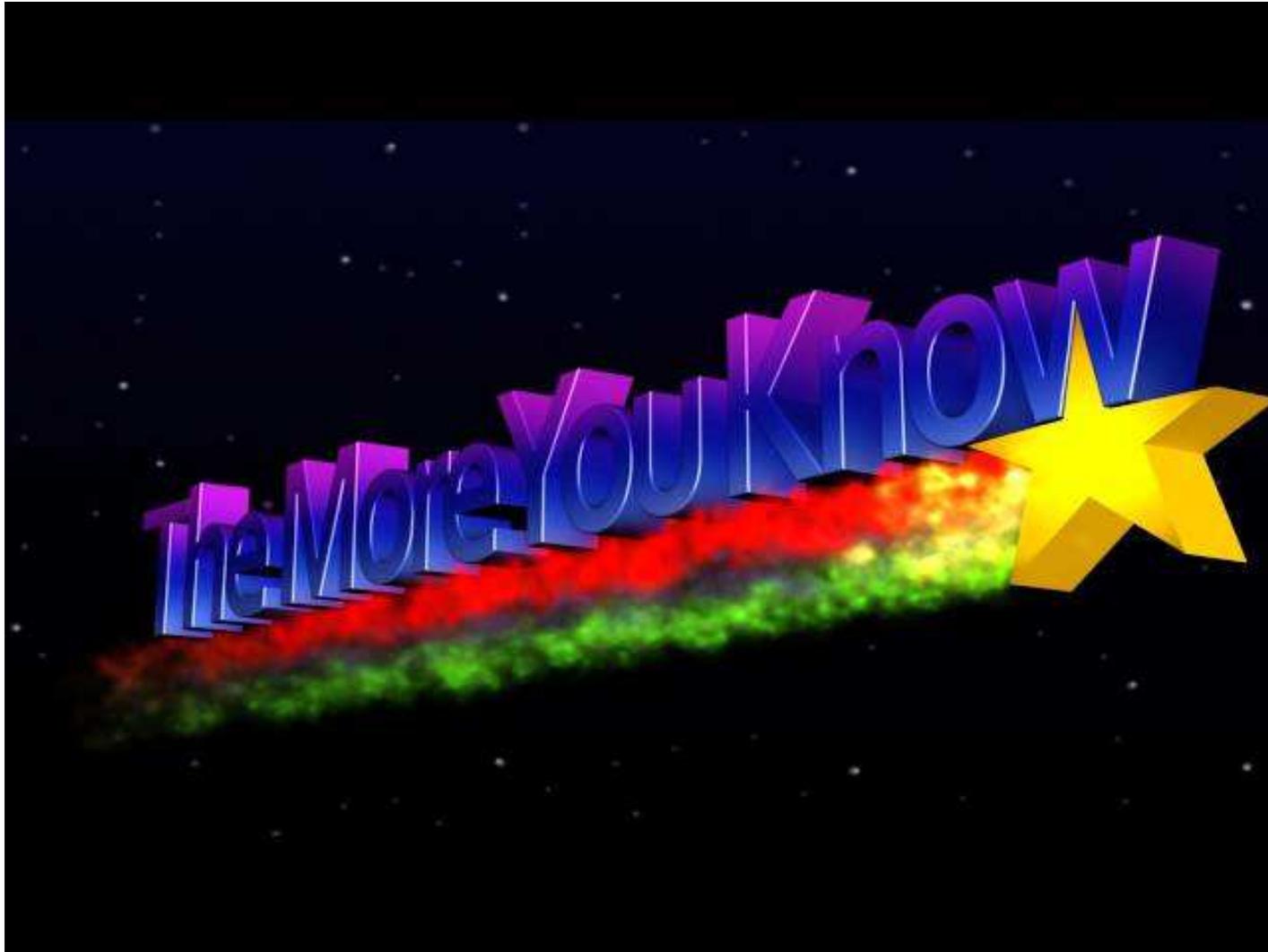




Disclosures

- Part of the property transaction around contaminated property
 - Owner:
 - Has obligations to provide written notice
 - Conditions may be recorded on the deed
 - Buyer:
 - Be fully aware of environmental conditions on property—
Protect yourself!
 - May receive notice from the seller
 - Look for a recorded Restrictive Covenant (RC) on title

Other Important Things to Know



Certifications

- Certification by property owner:
 - Part 213: DEQ has approved that all remedial requirements at the property for a particular release are completed
 - Part 201: A response activity is complete
 - No DEQ approval required
- Certificate of Completion from DEQ (Part 201 only)
 - DEQ approved that a response activity was completed





Concluding Thoughts

- Be aware of Michigan's cleanup laws and how they might affect your community
 - Are you liable?
 - What are your Due Care responsibilities?
 - Be aware of LRURs and what they mean for your community!
 - Disclosures, Certifications: be aware of what they mean
 - The DEQ is here to help!



STATE OF MICHIGAN



DEPARTMENT OF ENVIRONMENTAL QUALITY

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