

Environmental Cleanup – Citizen’s Guide

What You Need to Know if You Own or Purchase Property with Environmental Contamination

INTRODUCTION

This fact sheet will help you understand how Michigan’s environmental cleanup programs affect you as an owner, operator, or potential purchaser of contaminated property. While general questions about the state cleanup program are addressed in this document, more specific information is available at Michigan.gov/EGLERRD or by calling the Michigan Department of Environment, Great Lakes, and Energy (EGLE), Remediation and Redevelopment Division at 800-662-9278.

THE LAW GUIDING MICHIGAN’S CLEANUP PROGRAMS

The Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), regulates facilities of environmental contamination in Michigan. This law includes many “Parts” related to protecting human health and managing contaminated sites. EGLE’s Remediation and Redevelopment Division (RRD) administers two of these parts, or programs: Environmental Remediation¹ and Leaking Underground Storage Tanks². The origin of the release determines which program applies to a contaminated property.

The Environmental Remediation program covers releases of hazardous substances from a variety of sources (i.e. commercial and industrial processes, above ground storage tanks, environmental emergencies, etc.). The Leaking Underground Storage Tank program covers releases from underground storage tanks. Both programs address who is responsible for cleaning up the hazardous substances, how to determine exposure risks, and how to inform the RRD of response activities taken to address the environmental contamination.

Facilities that are classified as treatment, storage and disposal sites³; waste disposal areas⁴; or oil, gas and mineral wells⁵ are regulated under other parts of the

NREPA and are not included in the two cleanup programs described in this document. Contact EGLE at 800-662-9278 or visit Michigan.gov/EGLE for more information about these programs.

There are also **federal** cleanup laws and requirements that may affect you, including liability under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, or Superfund), and the Resource Conservation and Recovery Act (RCRA). Contact RRD if you have questions about liability under CERCLA.

ARE YOU LIABLE FOR A CONTAMINATED PROPERTY?

You are *not* liable for the cost of cleanup actions under Michigan’s environmental remediation or leaking underground storage tank programs or for oil, gas or mineral wells if:

- 1) You are not responsible for causing a release of a hazardous substance; *and* you became an owner or operator of contaminated property before June 5, 1995 (or March 6, 1996 for sites with leaking underground storage tanks):

OR

- 2) You become the owner or operator of a contaminated property on or AFTER June 5, 1995 (or March 6, 1996 for leaking underground storage tank sites), *and* you were not responsible for the release that caused the contamination, *and* you conduct an adequate Baseline Environmental Assessment (BEA) for your property prior to or within 45 days of becoming the owner or operator, *and* you submit the BEA to the DEQ within the required timeframe, *and* you disclose the results of the BEA to subsequent purchasers or transferees (see *Baseline Environmental Assessments*).

The same liability principles apply to people who control, but do not own, property – they are designated as “operators.” People who lease property will often be operators.

¹ Part 201 (Environmental Remediation) of NREPA

² Part 213 (Leaking Underground Storage Tanks) of NREPA

³ Part 111 (Hazardous waste Management) of NREPA

⁴ Part 115 (Solid Waste Management) of NREPA

⁵ Part 615 (Supervisor of Wells) and Part 625 (Mineral Wells) of NREPA

DO YOU HAVE TO CLEAN UP CONTAMINATED PROPERTY?

A “facility” is defined by Michigan’s cleanup programs as any area, place, or property where a hazardous substance in excess of the established state cleanup standard for residential property has been released, deposited, disposed of, or otherwise comes to be located. Property is no longer a facility when actions to remove, reduce or treat the contamination are completed, lowering the amount of contamination to a level that is below the state’s unrestricted residential cleanup standards (see Cleanup Standards).

If you are liable for a facility, you are obligated by law to take appropriate response activities at that property. In particular, if you currently own or operate property that you know is a facility and you caused the contamination or are otherwise liable, you must: immediately stop a release at its source; control or eliminate any fire, explosion and direct contact hazard; remove liquid wastes and highly contaminated soils; identify the hazardous substances and the area affected by the release; and take actions to clean up the contamination and/or prevent exposure to hazardous substances.

DUE CARE OBLIGATIONS

All owners and operators of a facility, even if you are not liable for the contamination, have “due care” obligations.

“Due care” means that an owner or operator of a facility is required to take measures to prevent unacceptable exposures to hazardous substances or create conditions that worsen the contamination. With certain exceptions, an owner or operator of a facility shall do all of the following with respect to contamination existing at the facility:

- ▶ Not worsen the existing contamination.
- ▶ Prevent unacceptable human exposure and reduce fire and explosion hazards to allow for the intended use of the facility that is protective of the public health and safety.
- ▶ Take reasonable precautions against the reasonably foreseeable acts or omissions of a third party.
- ▶ Provide notification to EGLE and others.

- ▶ Provide reasonable cooperation, assistance, and access to the persons that are authorized to conduct response activities at the property.
- ▶ Comply with any land use or resource use restrictions established or relied on in connection with the response activities.
- ▶ Not impede the effectiveness or integrity of any land use or resource use restriction.

Measures may include response actions such as providing alternate water to prevent people from drinking contaminated groundwater or maintaining a barrier over contaminated soil to prevent contact with contaminated soil. What measures are needed is determined by evaluating both the property use and the existing contamination. Due care requirements are not related to the owner or operator’s liability for the contaminants; they apply to non-liable parties and liable parties alike. The due care requirements were designed so contaminated properties could be safely used and redeveloped.

Visit Michigan.gov/EGLEDueCare for more information about due care.

BASELINE ENVIRONMENTAL ASSESSMENTS

A properly conducted and submitted Baseline Environmental Assessment (BEA) allows a person to acquire or begin operating at a facility without being held liable for existing contamination. A BEA is only conducted on a property that is a facility. The only sure way to find out if a property is a facility is to evaluate the property and its history. New owners or operators should have an Environmental Professional conduct an All Appropriate Inquiry (AAI) or a Phase I Environmental Assessment, which, at a minimum, requires the review of past activity on the property – including land and chemical use; review of regulatory agency files on the property; and a visual survey of the property to look for signs of soil staining or other indicators of possible contamination. If there are conditions indicative of a release, soil and ground-water samples are collected to determine if contaminants are present at concentrations above the unrestricted residential cleanup criteria. A BEA includes the AAI or Phase I report and the sampling and analysis that confirm that the property is a facility.

To take advantage of the liability protection provided by a BEA, as a new owner or operator, you must:

1. Conduct the AAI and BEA prior to, or within 45 days after the date of purchase, occupancy or foreclosure, whichever occurs first,

AND

2. Submit the BEA report to EGLE and subsequent purchasers and lessees.

The BEA must be submitted to EGLE within six months of the date of purchase, occupancy, or foreclosure, whichever comes first.

New residential property owners or operators can be exempt from liability and the need to conduct a BEA *if* hazardous substance use at the property will be consistent with normal residential use. This includes chemical lawn treatments, paints, cleaners, and other house-hold products in quantities found in a typical home. There are also other limited exemptions to the requirement to perform a BEA, including exemptions for commercial lessees. However, it may be necessary in these cases to gather data to determine appropriate "due care" measures and potential limitations on the property use to prevent unacceptable exposures.

Completing a BEA or relying upon an exemption can give you liability protection for existing contamination, which means you won't have to pay for cleaning up contamination you didn't cause. **Remember, however, that you still have "due care" obligations.**

Visit Michigan.gov/BEA for more information on prepare/submitting a BEA.

CLEANUP STANDARDS

The Environmental Remediation program authorizes EGLE to set cleanup standards by considering how the contaminated land is used. Michigan's cleanup standards are risk-based and reflect the potential for human health or ecological risks from exposure to potentially harmful substances at contamination sites. These cleanup standards and other technical guidance to help you make decisions about contaminated property are available at Michigan.gov/EGLERRD.

If you are cleaning up a facility, you can choose an appropriate category of cleanup standard based on proposed land use. There are five categories of land use-based cleanup standards: unrestricted residential, unrestricted site-specific, restricted residential, restricted non-residential, and restricted site-specific.

The unrestricted residential cleanup standards are the most restrictive remediation criteria for property, because it is assumed that there is the greatest opportunity for exposure to contamination in

residential settings, especially for children. When a facility is cleaned up to residential standards, the property is considered safe for all uses.

If you propose to clean up your property based on non-residential standards, you must demonstrate that the current and future land use and zoning at the property does not allow residential uses. Restricted (limited) categories exist for circumstances that require restrictions on the use of property, such as not allowing residential or institutional uses, or on the natural resources, such as exposure barriers (i.e., paving) or prohibitions on resource use (i.e., don't drink the groundwater) to keep people from being exposed to contamination now and in the future.

If you propose to clean up your property based on any of the restricted categories, certain restrictions must be placed on the property deed to ensure that the use restrictions and exposure barriers remain in place. Some remedial actions may also require a post closure agreement with EGLE and a financial assurance mechanism.

Cleanups based on site-specific land uses are also allowed. Contact EGLE for further information on these cleanups.

EGLE WANTS TO WORK WITH YOU!

The most important thing to remember is that environmental solutions in Michigan depend on what kind and quantity of contaminants are present, where they are located, who or what is at risk of exposure, and how you want to use the property: Each piece of property, each contamination scenario, and each proposed new use is different. Contact us directly to discuss your specific situation and apply the risk management measures to safely reuse your property.

EGLE is committed to working with owners, operators, and purchasers of contaminated properties to make it easier and safer to redevelop property contaminated with hazardous substances.

Michigan offers incentives for redeveloping contaminated, blighted, and functionally obsolete properties, including tax increment financing, brownfield site assessments, and grants and loans. Visit Michigan.gov/EGLEBrownfields for information.

For a statewide listing of EGLE RRD offices, visit Michigan.gov/EGLERRD.

EGLE will not discriminate against any individual or group on the basis of race, sex, religion, age, national origin, color, marital status, disability, political beliefs, height, weight, genetic information, or sexual orientation. Questions or concerns should be directed to the Office of Human Resources, P.O. Box 30473, Lansing, MI 489093.