

Baseline Environmental Assessments (BEA)

*Liability protection for new or prospective owners
or operators of contaminated property*

BUYING, LEASING, OR FORECLOSING ON PROPERTY?

This guide to BEAs is designed for persons buying, leasing, or foreclosing on property that might be contaminated. A person can buy, lease, or foreclose on contaminated property and be protected from liability for cleanup of contamination on the property (provided they did not cause the contamination) if they: 1) conduct a baseline environmental assessment (BEA) and, 2) disclose it to the Department of Environmental Quality (DEQ) and subsequent purchasers and transferees of the property, as outlined under Part 201 (Environmental Remediation) and Part 213 (Leaking Underground Storage Tanks) of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA).

If the property is shown to be contaminated (see page 2), this guide will assist the potential new owner or operator of a property in conducting a BEA and obtaining liability protection for the existing contamination.



Abandoned property - prime for redevelopment.

First, there are immediate time frames that must be met in conducting and disclosing a BEA to the DEQ; please refer to the section on time frames.

A thorough review of the statute/guidelines is also highly recommended before making site-specific decisions.

The Part 201 and Part 213 statutes, Part 10 (Due Care) Administrative Rules, and BEA Submittal Form are available at the DEQ web site: www.michigan.gov/bea.

DUE DILIGENCE

Is this property contaminated?

A potential new owner or operator is obligated to conduct all appropriate inquiry (commonly referred to as: performing due diligence) to evaluate whether environmental contamination is potentially present on a piece of property. The initial step is to ask the seller or owner about any known environmental conditions. Buyers are also encouraged to contact the DEQ, which maintains records of contaminated properties and may already have information about the property the potential purchaser may need. The next step is to hire an environmental professional (see *Environmental Professional, page 3*) to conduct an environmental assessment of the property using the federal All Appropriate Inquiry (AAI) process [40 CFR 312] or the American Society for Testing Methods (ASTM) Phase I Environmental Site Assessment process [1527-05].

A fact sheet on Michigan's environmental cleanup program from...

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The AAI or Phase I report may identify conditions indicative of an actual or threatened release of hazardous substances -- often called Recognized Environmental Concerns (REC). An environmental professional can assist in determining if it is necessary to proceed to a Phase II or equivalent assessment. The Phase II assessment involves further investigation into the RECs, including collecting soil and/or groundwater samples, identifying the presence of underground tanks, and documenting any abandoned containers and their contents, etc.

HOW CONTAMINATED IS THE PROPERTY?

The information gained in the AAI or Phase I and Phase II assessments is used to determine whether the property is contaminated at concentrations greater than the unrestricted residential criteria -- the state's most protective cleanup criteria. These criteria are available on the DEQ's web site at www.michigan.gov/deqrrd (scroll down and select Cleanup Criteria Requirements for Response Activity, then select Tables 1, 2 or 3 for appropriate criteria comparison table). If the contaminant concentrations on a property do not exceed the unrestricted residential criteria, then the property is not regulated pursuant to Parts 201 and/or 213. Documentation should be maintained by the new owner or operator to show that they have conducted due diligence in accordance with Parts 201 and 213. A BEA is only applicable for a property where contaminants in excess of the unrestricted residential criterion are detected.

If the detected contaminant concentrations exceed one or more residential criteria, then the property is contaminated, and a BEA may be the next step. Potential owners/operators may wish to discuss the necessity for a BEA with the DEQ, their environmental professionals and/or their attorneys. There may be other options and

exemptions for resolving potential liability in certain circumstances.

BASELINE ENVIRONMENTAL ASSESSMENTS

Parts 201 and 213 define a BEA as a written document that describes the results of the AAI and includes the sampling and analysis that confirm that the property is contaminated above the unrestricted residential criteria. Disclosure of the BEA to the DEQ provides liability protection for the new owner or operator for cleanup of contamination caused by others. This liability protection includes known and unknown contamination under specific programs regulated by the NREPA:

- ▶ Part 201 (Environmental Remediation)
- ▶ Part 213 (Leaking Underground Storage Tanks)
- ▶ Part 31 (Water Resources Protection)
- ▶ Part 17 (MI Environmental Protection Act)
- ▶ Part 615 (Supervisor of Wells)
- ▶ Part 625 (Mineral Wells)

A BEA does not provide protection from liability under other state and federal laws, including:

- ▶ Landfills regulated under Part 115 of NREPA.
- ▶ Treatment, Storage, and Disposal (TSD) facilities regulated by the federal Resource Conservation and Recovery Act (RCRA) and Part 111 (Hazardous Waste Management) of the NREPA.
- ▶ Underground storage tank operational requirements under Part 211 of the NREPA.
- ▶ Federal Comprehensive Environmental Response and Compensation Liability Act (CERCLA) and Superfund.

The U.S. Environmental Protection Agency (EPA) and DEQ have entered into an agreement that the EPA will not take action against a person who has disclosed a BEA unless the facility is on the federal National Priority List, federal funds

have been spent to respond to conditions at the facility, or there is an imminent danger to the public health, safety, welfare, or the environment.

TIME FRAMES TO CONDUCT A BEA

A BEA must be conducted prior to or within 45 days after becoming the owner or operator of a contaminated property. “Conducted” means the AAI or Phase I report, the field work, and sample analysis are all completed, and the BEA report is written.



DISCLOSURE OF A BEA TO THE DEQ AND TO SUBSEQUENT PURCHASERS OR TRANSFEREES

To obtain and maintain liability protection, Parts 201 and 213 require that a BEA be submitted to the DEQ and to subsequent purchasers or transferees, including lessees. The BEA must be submitted to the DEQ within 6 months after the earlier date of becoming the owner, operator, or of foreclosure to the DEQ District Office for the county in which the property is located. DEQ mailing addresses for BEA submittals are available at the DEQ-BEA web site: www.michigan.gov/bea. The BEA must also be made available to subsequent purchasers or transferees, including lessees, prior to transfer of the interest in the property.

BEA CONTENT AND FORMS

The form for submitting a BEA is available on the DEQ-BEA web page (see above). A person who is legally responsible or is authorized by the owner or operator, such as the owner or president of a company, must sign the submittal

form. The content of a BEA report is outlined on the third page of the submittal form.

ENVIRONMENTAL PROFESSIONALS

A BEA is typically performed by an environmental consultant. The AAI or Phase I environmental assessment report must be prepared by an environmental professional as defined in the AAI Federal Rules or ASTM standards (*see links in Sources of Information*). Resources for finding an environmental professional, consultant or engineer, include: online searches for Environmental, Ecological, or Engineering consulting firms; referrals from financial institutions, real estate agencies, or trade associations, etc. It's wise to ask the professional or consultant for references and make inquiries as to the number of BEAs they have completed. The DEQ does not provide recommendations for environmental professionals, consultants or engineers.

SOURCES OF INFORMATION

DEQ Environmental Assistance Center
1-800-662-9278

www.michigan.gov/bea

DEQ Remediation and Redevelopment Division Web Page

www.michigan.gov/deqrrd

DEQ Remediation and Redevelopment Division Contact

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DEQ Office of Oil, Gas and Minerals Contact

Part 615 (Supervisor of Wells – oil/gas wells) and
Part 625 (Mineral Wells)

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