

INSTRUCTIONS

FOR

PREPARING AND DISCLOSING

BASELINE ENVIRONMENTAL ASSESSMENTS AND SECTION 7a COMPLIANCE ANALYSES

TO THE MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

AND FOR

REQUESTING OPTIONAL DETERMINATIONS

Under the authority of Part 201, 1994 PA 451, as amended,
and the rules promulgated thereunder



**MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
REMEDATION AND REDEVELOPMENT DIVISION <http://www.michigan.gov/deq>**

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INTRODUCTION

Background

The June 5, 1995, amendments to Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended, and the March 6, 1996 amendments to Part 213, Leaking Underground Storage Tanks, of the NREPA, substantially modified provisions of the law regarding liability for the cleanup of environmental contamination. Section 26(1)(c) of Part 201 provides certain liability protections to a person who becomes an owner or operator of contaminated property on or after June 5, 1995 (or March 6, 1996, if the contamination results from a leaking underground storage tank (UST) regulated under Part 213), if, among other things, that person conducts a Baseline Environmental Assessment (BEA). The purpose of a BEA is to gather sufficient information about the property being transferred to allow a new release to be distinguished from existing contamination. Section 29a of Part 201 allows a person to petition the Department of Environmental Quality (DEQ) for a determination that their BEA satisfies the requirements for the liability exemption. The pertinent provisions of Part 201 are described in more detail below. Throughout this document references to Section numbers of Part 201 omit the initial "201." References to the Part 201 Rules omit the "R299.5," which is part of the Administrative Code citation for the Rules. Throughout this document there are references to the effective date of the Rules for BEAs and "Due Care." That date is March 11, 1999. A glossary of key terms is included in Appendix F of this document.

Authority

Pursuant to Section 26(8) of Part 201, the Part 9 Rules were promulgated to define the minimum technical standards for BEAs and to facilitate implementation of Sections 26(1)(c) and 29a of Part 201. This package includes instructions for the preparation of BEAs, and the forms which must be used for disclosure of a BEA to the DEQ. Section 29a and Rule 911(1) specify that petitions for BEA review and related DEQ determinations must be submitted on a form provided by the DEQ. Rule 919(4) requires that BEA disclosures to the DEQ pursuant to Section 26(1)(c) must be submitted on a form specified by the DEQ. The required forms are included in this package. The instructions and forms in this package are subject to revision. The most current version of the required forms can be obtained by contacting the DEQ or downloading the forms from the Internet at www.michigan.gov/deqrrd.

Important Provisions of the Law

Some of the most important provisions of Part 201 and the Part 9 Rules related to BEAs are reviewed here to assist the reader in understanding these instructions. This summary does not substitute for a careful reading of the law. Persons preparing BEAs should be thoroughly familiar with Part 201 and the Part 9 Rules.

"Facility" is an important term under Part 201. The definition from Section 1(1)(o) is:

"Facility" means any area, place, or property where a hazardous substance in excess of the concentrations which satisfy the requirements of Sections 20a(1)(a) or (17) or the cleanup criteria for unrestricted residential use under Part 213 has been released, deposited, disposed of, or otherwise comes to be located. Facility does not include any area, place, or property at which response activities have been completed which satisfy the cleanup criteria for the residential category provided for in Sections 20a(1)(a) and (17) or at which corrective action has been completed under Part 213 which satisfies the cleanup criteria for unrestricted residential use.

Note that hazardous substance concentrations must exceed one or more residential cleanup criteria (Section 20a(1)(a)) of Part 201 or the cleanup criteria for unrestricted residential closure under Part 213 in order for property to be a "facility." Residential cleanup criteria are contained in Environmental Response Division Operational Memorandum #18 (Part 201 Generic Cleanup Criteria). The facility definition also refers to Section 20a(17). Subsection (17) deals with ecological risks and other factors in addition to human health risks. The most current version of Operational Memorandum #18 can be obtained by contacting the DEQ or from the Internet at www.michigan.gov/deqrrd.

Section 26(1) identifies persons who are liable under Part 201. Section 26(1)(c) contains a provision to allow persons to purchase or begin operating at a facility after June 5, 1995, (or after March 6, 1996, for contamination resulting from a leaking UST regulated under Part 213), without taking on liability for cleanup of existing contamination. Under Section 26(1)(c) an owner or operator of a facility who becomes an owner or operator on or after the relevant effective date (see next section) will be liable for existing contamination unless the owner or operator complies with both of the following, or unless other defenses apply:

- (i) *A baseline environmental assessment is conducted prior to or within 45 days after the earlier of the date of purchase, occupancy, or foreclosure. For purposes of this section, accessing property to conduct a baseline environmental assessment does not constitute occupancy.*
- (ii) *The owner or operator discloses the results of the baseline environmental assessment to the department and subsequent purchaser or transferee if the baseline environmental assessment confirms that the property is a facility.*

Effective Dates of Part 201 and Part 213

Since certain amendments to Part 201 and Part 213 have different effective dates, the date when a BEA is applicable as a tool for liability protection varies depending on the source of the contamination. If contamination at a property is the result of a source other than a leaking UST, the relevant effective date for new owners or operators of contaminated property is June 5, 1995. On or after June 5, 1995, to be protected from liability for existing contamination from a source other than a leaking UST, a new owner or operator must complete a BEA. Owner and operator liability prior to June 5, 1995, is based on causation.

If the source of the contamination at a property is the result of a leaking UST, the relevant effective date for new owners and operators of contaminated property is March 6, 1996. On or after March 6, 1996, to be protected from liability for existing contamination from a leaking UST, a new owner or operator must complete a BEA. Owner and operator liability prior to March 6, 1996, is based on causation.

Consequently, prior to March 6, 1996, a person who became an owner or operator of property contaminated as a result of a release from a leaking UST regulated under Part 213 is generally only liable if they are responsible for an activity causing a release. However, the new owner or operator would have liability for any contamination resulting from a non-UST source if a BEA was not conducted between June 5, 1995 and March 6, 1996.

BEA Determinations and Disclosures

Section 29a allows a person to petition the DEQ for a determination that a BEA meets the requirements for an exemption from liability under Section 26(1)(c). BEAs submitted to the DEQ pursuant to Section 29a must be submitted within 6 months after completion of the BEA.

Alternatively, BEAs may be submitted to the DEQ pursuant to the requirements of Section 26(1)(c) and Rule 919, without requesting a written determination. A BEA must be disclosed **no**

later than 8 months after the earliest of the date of purchase, occupancy, or foreclosure, if that BEA is completed after the effective date of the Part 9 Rules.

There is a potential conflict in the time available for disclosure of a BEA between Rule 919(3) and 919(8). While Rule 919(3) provides that the contents of the BEA must be disclosed to the department not later than 8 months after purchase, occupancy or foreclosure, Rule 919(8) requires the BEA to be disclosed to the department not later than 6 months after completion of the BEA; hence if the BEA is completed prior to or less than 60 days after purchase, occupancy or foreclosure, Rule 919(3) provides a longer period of time for disclosure than Rule 919(8). So long as the BEA is disclosed within the longer time period (8 months after the earliest to occur of purchase, occupancy or foreclosure), the DEQ will deem the disclosure requirements to be met.

For BEAs completed prior to the effective date of the Part 9 Rules, the BEAs must be disclosed to the DEQ not later than 6 months after the effective date of the Part 9 Rules.

To maintain liability protection, the owner or operator must disclose the results of the BEA to a person who will become an owner or operator. The BEA results must be disclosed to a subsequent purchaser prior to consummating the sale of the property or to a subsequent operator prior to conveying interest in the property.

This document contains instructions and forms needed to complete and disclose a BEA, and to request a determination about the adequacy of the BEA. See the Table of Contents for specifics.

Due Care Provisions and Determinations

Section 7a is commonly referred to as the "Due Care" section of Part 201. The Part 10 Rules facilitate the implementation of Section 7a. Section 7a generally requires a person who owns or operates property that he or she has knowledge is a facility (regardless of whether the person is liable under Section 26) to do all of the following:

- (a) *Undertake measures as are necessary to prevent exacerbation of the existing contamination.*
- (b) *Exercise due care by undertaking response activity necessary to mitigate unacceptable exposure to hazardous substances, mitigate fire and explosion hazards due to hazardous substances, and allow for the intended use of the facility in a manner that protects the public health and safety.*
- (c) *Take reasonable precautions against the reasonably foreseeable acts or omissions of a third party and the consequences that are foreseeable could result from those acts or omissions.*

The person submitting a BEA under Section 29a may also, in conjunction with the petition, request a determination that the proposed use of the property satisfies the requirements of Section 7a. These Instructions contain guidance to be used in preparing a request for a DEQ determination regarding compliance with Section 7a and the Part 10 Rules.

Timing and Modifications

In order to meet the criteria for an exemption from liability under Section 26(1)(c), a BEA must be conducted prior to or within 45 days after the earliest of purchase, occupancy, or foreclosure and completed not more than 15 days after the date required by Section 26(1)(c) or Rule 903(8), as applicable. The following defined terms are important to timing and modifications:

"Conducted" refers to the date when all site history research, fieldwork, laboratory analysis, and data interpretation are complete and BEA report preparation is substantially complete. A person submitting a BEA should maintain a copy of the BEA

in the form that was substantially complete (i.e., "conducted") to demonstrate that only editorial matters were modified in the time allowed to "complete" the BEA and that no substantive changes were made.

"Date of completion" refers to the date the BEA report is finalized.

"Date of occupancy" is defined in the Part 9 Rules as the date when a person first becomes an operator of the property.

Rule 903(8) clarifies the timing requirements to establish liability protection for a person who is a permittee for subsurface oil, gas, storage, or mineral rights under Part 615 (Supervisor of Wells) or Part 625 (Mineral Wells) of the NREPA.

In situations where a foreclosing lender is delayed in getting access to a property because of the foreclosure redemption process, the 45 day period will begin when the lender gains control over the property. The lender must fully document any delays attributable to the redemption process.

Specific provisions are made in Rule 917 for curing deficiencies in a BEA after the 45 day period specified in Section 26(1)(c). See Appendix D (Curing Deficiencies) for the procedures related to this provision.

The DEQ has developed procedures to be followed by persons wishing to submit Post-BEA Information regarding a property. For example, an owner or operator may choose to submit Post-BEA Information for the DEQ's facility file with information about facility conditions. For procedures for submitting this Post-BEA Information to the DEQ, see Appendix E (Instructions for Submittal of Post-BEA Information).

Similarly, Rule 915 provides time to develop a comprehensive site use plan, by allowing a petitioner up to 6 months from the time the initial BEA is complete to submit their Section 7a Compliance Analysis. For procedures for submitting a Section 7a Compliance Analysis subsequent to a BEA, see the Instructions for Section 7a Compliance Analysis. The procedures are under sub-heading "Submittal of a Section 7a Compliance Analysis Subsequent to a BEA."

CAUTION

Before petitioning the DEQ for a determination of adequacy on a BEA, petitioners should carefully consider the consequences of conducting an inadequate BEA and receiving a negative determination. If the timing of the petition and determination do not provide an opportunity for the petitioner to correct deficiencies in the BEA, then the petitioner may be taking on liability for the existing contamination. For example, if a new purchaser submits a petition to the DEQ 38 days after purchase, has already started operating on the property using hazardous substances, then receives a negative determination on the adequacy of the BEA from the DEQ on day 55 that would require additional sample collection on the property for the hazardous substances being used, then the petitioner would not be able to correct the deficiency and would be considered by the DEQ to be strictly, jointly and severally liable for the existing contamination unless he or she is able to successfully assert another defense or exemption pursuant to Section 26.

Other Tools for Liability Protection

In cases where the new owner's or operator's use of the property will involve the same hazardous substance(s) as those which have been released at the property, it may be very

complex and costly to conduct an adequate BEA because of the level of information required to distinguish "old" from "new" contamination. In such cases, other mechanisms which afford liability protection to the new owner or operator may be considered. If you believe that an adequate BEA is infeasible in your case, you may contact the DEQ prior to acquiring an interest in the facility to discuss options for liability protection. Persons must meet the statutory requirements for any alternative mechanisms for liability protection (e.g., Covenant Not to Sue).

Liability Under Other Parts of the NREPA

Persons preparing a BEA are advised to closely examine Sections 26(2), 29a(5), and 42. The liability protection associated with a BEA **does not** extend to liability under Part 111 (Hazardous Waste Management), Part 615 (Supervisor of Wells), or to other Parts of the NREPA not specifically mentioned in Sections 42 and 29a(5).

Comments Invited

Comments on these instructions, guidance, and forms are welcome and should be directed to the Environmental Response Division, Michigan Department of Environmental Quality, P.O. Box 30426, Lansing, Michigan 48909-7926.

Questions regarding preparation of BEAs or use of these instructions and forms should be directed to the Environmental Response Division (ERD), District Supervisor at the offices identified in Appendix A of this document.

INSTRUCTIONS FOR BASELINE ENVIRONMENTAL ASSESSMENTS

Minimum Technical Standards for Baseline Environmental Assessments Conducted Under Section 20126(1)(c) of 1994 PA 451, as amended, and the Part 9 Rules

Purpose of Baseline Environmental Assessments

The purpose of a Baseline Environmental Assessment (BEA) is stated in the definition in Section 1(1)(d):

"Baseline environmental assessment" means an evaluation of environmental conditions which exist at a facility at the time of purchase, occupancy, or foreclosure that reasonably defines the existing conditions and circumstance at the facility so that in the event of a subsequent release, there is a means of distinguishing the new release from existing contamination. (Emphasis added.)

Being able to distinguish "new releases" from "existing contamination" is a function of what has already been released, and what might be released in the future. If the nature of and potential for future releases are very clearly characterized and/or limited, there may be little need for extensive data characterizing current contamination in order to appropriately conclude that new releases could be distinguished. Therefore, BEAs of limited scope may be performed taking into account specific future uses of the property and uses of hazardous substances at the property. Conversely, if the nature of and potential for new releases are not characterized or limited, a great deal of information to characterize and quantify existing contamination may be needed. These instructions relate to definition of conditions at the property being transferred, which may not include the entire facility. Where the facility is larger than the property, describing conditions at the property rather than the facility is sufficient.

Parties petitioning for a BEA determination should recognize that data of a different scope and purpose will routinely be needed for determinations of compliance with the "due care" obligations of Section 7a. While requiring some of the same type of information included in typical BEAs, Section 7a compliance determinations may require more extensive data and interpretations.

Minimum Technical Standards

The following describes typically expected and generally necessary elements of BEAs, as required under Rule 907. Although the elements specified here will routinely be acceptable, a greater degree of evaluation and documentation will often be in the interest of potential new owners and operators, particularly for assessing compliance with Section 7a obligations. Such parties are encouraged to develop the additional information and include it in reports to the department. Concise, well-organized reports will facilitate agency reviews and issuance of determinations. The format provided in these Instructions is authorized in Rule 907(7). The chart on Page 18 summarizes the information discussed below. (The alphanumeric references follow from the chart.)

A BEA may include data and information from studies conducted for other purposes. However, the data and information from prior studies must be sufficiently recent so as to describe conditions at the property at the time of purchase, occupancy, or foreclosure. Persons relying on data and information developed for other purposes must be confident of the accuracy and reliability of the data and information.

The minimum technical standards for all Categories of BEAs require that the property tax identification number or ward and item number be included for the property covered by a BEA. If the property covered by a BEA is only a portion of a parcel that is covered by one property tax number, indicate "a portion of xxx-xxx-xxx". List all property tax numbers that are relevant, in part or in whole.

In general, if more than one contiguous property (as defined by tax identification or ward and item number) is being transferred, each property must be evaluated separately to determine if it is a facility, regardless of whether the property will be in common ownership after the transfer. The DEQ may, at the request of a person preparing a BEA and under special circumstances, consider contiguous properties to be part of a facility without establishing that the properties are each a facility. Special circumstances which may support such a conclusion include common ownership and hazardous substance use on properties immediately preceding the transfer of interest covered by the BEA, and/or the presence of ubiquitous contamination that has been previously identified (e.g., large areas of fill.) A BEA may include 2 or more contiguous properties that will be in common ownership after transfer provided that each property is demonstrated in the BEA to be a facility, except as provided above. In addition, the presence of a transportation corridor (e.g., road, railroad, alley) does not prevent land from being considered a single property for BEA purposes.

Determining BEA Category

A BEA must address all known significant hazardous substance use that will occur after purchase, occupancy, or foreclosure. There are three categories of BEAs: Category N (formerly referred to as 'A'), Category D (formerly referred to as 'B'), and Category S (formerly referred to as 'C'). The category of BEA required is determined by the anticipated future significant hazardous substance use on the property. Simply stated, a category N BEA is appropriate when there will be no future significant hazardous substance use on the property. A category D BEA is appropriate when the hazardous substance(s) to be used on the property in significant quantities are different than the hazardous substance(s) known or likely to be property contaminants. A category S BEA is appropriate when one (or more) of the hazardous substances to be used on the property in a significant quantity is the same as a hazardous substance known or likely to be a property contaminant, or when there is no limit specified on the hazardous substances to be used on the property in significant quantities.

A BEA must account for the significant hazardous substance use of the owner as well as all identified tenants and operators. Rule 903(5) requires that the owner consider the hazardous substance use of all tenants and operators who at the time the BEA is completed, are in possession of, or under agreement to take possession of, all or part of the property. A Category N BEA is also acceptable for an owner who anticipates hazardous substance use by a tenant in the future, but where the specific hazardous substances cannot be defined at the time the BEA is conducted because the tenant is not in possession of the property or under agreement to take possession of the property. See Rule 903(5). In this case, the owner is advised to gather Post-BEA Information prior to the tenant's use of hazardous substances at the property. A tenant's BEA may provide appropriate information to be used as Post-BEA Information by the owner. See Appendix E for more about Post-BEA Information. Category N BEAs are acceptable for properties where new owners and operators will not use hazardous substances in a manner that constitutes significant hazardous substance use. This includes investors and municipalities who hold idle property for resale or lenders who simply hold idle property after foreclosure until it is transferred to another party. Detailed descriptions for all three categories are discussed below.

As defined in Rule 901(o), "**significant hazardous substance use**" means the use, storage, handling, or management, at any time, of hazardous substances in quantities that exceed those

commonly used for typical residential or office purposes; however, significant hazardous substance use does not include any of the following:

- (i) Gasoline, oil, or other vehicle fluids which are contained in vehicles traversing or parked at a property on a short-term basis.
- (ii) Storage of hazardous substances for retail sale in packaging and in quantities consistent with use by occupants of residential dwellings.
- (iii) Storage or management of aboveground storage tanks, barrels, containers, or other receptacles containing hazardous substances that are appropriately identified in the BEA as being abandoned or discarded at the time of purchase, occupancy, or foreclosure.

The DEQ may, pursuant to Rule 903(4), issue a written determination, on a case-by-case basis, that the use, storage, or handling of hazardous substances that exceed quantities commonly used for typical residential or office purposes is not significant hazardous substance use. To request such a determination the submitter must provide a written request to the DEQ District office in which the facility is located (see Appendix A for addresses of DEQ offices and areas served). The request must include, at a minimum, the following information: the name and CAS number(s), if available, of the hazardous substance(s) proposed for use, storage, handling, or management; the quantity of hazardous substance(s) to be used, stored, or handled, over a specified time period; the maximum quantity of the hazardous substance to be present on the property at any given time; how the hazardous substances will be transported to, stored, and handled at the facility; and an explanation of why the submitter believes such hazardous substance use should be considered "not significant hazardous substance use." The DEQ may request additional information, if needed, to make its determination. If the DEQ determines that there is no significant hazardous substance use, then the hazardous substance(s) covered by the determination can be eliminated from further consideration in the BEA. A request for such a determination in no way alters the timeframes for completion and disclosure required under Part 201 and the Part 9 Rules. A request for such a determination may be made prior to petitioning or disclosing a BEA to the DEQ, or the request may be included in the petition. If timing is critical, this request should be made prior to petitioning the DEQ.

Only those hazardous substances that are present at the property in excess of applicable residential cleanup criteria must be considered when determining the appropriate BEA category. If a hazardous substance is detected at the property but not in excess of the applicable residential criteria, that hazardous substance may, at the option of the submitter, be dropped from consideration if the BEA contains documentation that there is a reasonable basis, after appropriate inquiry and considering the purpose of the BEA, to conclude that it is not present in quantities exceeding the applicable residential criteria.

BEA Considerations when Underground Storage Tanks are Present

Underground storage tanks containing any quantity of hazardous substance must be considered when determining the appropriate category of a BEA pursuant to Rule 907(5). If an UST is known to be present at the property, then the BEA must indicate whether the UST will be used to contain a hazardous substance after the earliest of the date of purchase, occupancy, or foreclosure. "Known" according to Rule 907(6) refers to information known to the submitter and his or her agents, including the environmental professional preparing the BEA, at the time the BEA is conducted. The category of BEA to be conducted should be based on the following:

- If the UST will be used to contain a hazardous substance, then a category S or category D BEA must be conducted.
- If the UST will not be used to contain a hazardous substance, then a category N BEA may be conducted if a category N BEA is otherwise appropriate and if the underground

storage tank is emptied within 45 days after the earliest of the date of purchase, occupancy, or foreclosure. The department may, in its discretion, extend the 45 day period for emptying an UST under extenuating circumstances. To pursue an extension for tanks regulated under Part 213, contact the Storage Tank Division (STD) District Supervisor in the district office which serves the property before the expiration of the 45 day period. For all other USTs, contact the ERD District Supervisor.

These considerations are solely applicable to the BEA program, are in addition to any other requirements of state or federal laws and regulations applicable to USTs and do not limit the obligation of an owner or operator to comply with any other state or federal law or regulation with respect to an UST.

Category N

N. Characterization requirements for all BEAs, including properties at which there will be no significant hazardous substance use:

- N. I (a) Legal description and scaled map or survey depicting the property.
- (b) The property tax identification numbers for parcels which are included, in whole or in part, as property covered by the BEA. For properties in the city of Detroit, instead include the ward and item number associated with the property.
- (c) Photographs that depict important features of the property and evidence of releases, including abandoned containers, unless it is impractical to provide photographs or photographs would not provide useful information about the property. Photographs must be accompanied by information, including the date the photograph was taken, a description of what the photograph illustrates, the location where the photograph was taken and the name of the photographer, unless that information is not available (for older photos).
- (d) If your inquiry into the property or any portion of the property that is legally described in this BEA determined that a BEA(s) was previously submitted to the DEQ, provide the Petition or BEA Disclosure number(s) assigned by the DEQ.
- N. II (a) The names and chemical abstract service (CAS) numbers, when a CAS number is available, of all hazardous substances known to have been released at the property. "Hazardous substances known to have been released" includes hazardous substances known to be present in the environment as well as the contents of any abandoned containers or lagoons described pursuant to N. II. (b). Specify all substances, and their concentrations, which demonstrate that one or more of the residential category cleanup criteria are exceeded for the subject property. Names of other hazardous substances known to be present above background levels also may be identified, at the option of the submitter. For this degree of characterization, a detailed quantification of contaminants present (concentration averages, mass estimations, etc.) is not necessary. **This section of the BEA report must include the basis for the conclusion that the property is a facility.**
- (b) Identification of all of the following that are known to be present at the property after a reasonable inspection of the property and review of pertinent government records. This information must be provided on the form "Notice Regarding Discarded or Abandoned Containers," (EQP4476). See Appendix A. Submission of this form completed according to the instructions satisfies the requirements of Rule 1015(1) of the Part 10 Due Care Rules.
- (i) Abandoned aboveground storage tanks containing hazardous substances.
- (ii) USTs containing hazardous substances.
- (iii) Abandoned or discarded barrels, containers, or other receptacles containing hazardous substances.

- (iv) A general description of the known or likely contents of any aboveground storage tank, UST, barrel, container, or other receptacle as well as an estimate of the volume of the contents of each aboveground storage tank, UST, barrel, container, or other receptacle, unless it is impractical to make such an estimate. If it is impractical to estimate the volume of the contents of tanks, barrels, containers, or other receptacles at the facility, include an explanation of why it was impractical.
- N. III Identification of the general location(s) of the known contamination on the subject property, identifying environmental media affected, and property features (depict on a map, and explain with text and/or tables). An evaluation of past property use may be used, in part, to direct the sampling activities. For this degree of characterization, the specific contaminant distribution and extent do not need to be known and specified.
- N. IV An assessment and conclusions as to the likelihood that other hazardous substances are also present on the subject property. This assessment should be based on a thorough evaluation of all previous uses of the facility with special emphasis on hazardous substance use in commercial and industrial applications. An ASTM #E1527 Phase I Environmental Site Assessment or equivalent alternate assessment method is acceptable. Provide the results of the Phase I and Phase II Environmental Site Assessment or equivalent assessment that relate to the likelihood that other hazardous substances are also present on the subject property.
- N.V. **A specific statement that there will be no significant hazardous substance use at the property, and that this is the basis for being able to distinguish existing contamination from a new release. Any modifications to this statement (such as for an owner who has not yet identified specific tenants who will use hazardous substances), must be approved by the DEQ.**

Category D

- D. Characterization requirements in addition to those performed in Category N for BEAs performed where a specified new use of the property includes significant hazardous substance use, but different substances from those known or likely to be property contaminants:**
 - D. I. The names and CAS numbers, when a CAS number is available, of all hazardous substances that will be used or otherwise be present as a result of operations at the property in a quantity that constitutes significant hazardous substance use. Identification solely by trade name, reliance on material safety data sheets that list unidentified or unspecified substances as an ingredient in a product, or other imprecise identification of hazardous substances is acceptable only if the information is adequate to allow a new release to be distinguished from existing contamination. Hazardous substance names and CAS numbers must be presented in tabular format.
 - D. II. No additional characterization needed, beyond that specified in N. II.
 - D. III. Identification by general or specific location, of known contamination on the property and the environmental media affected in addition to the characterization specified in N. III.
 - D. IV. A demonstration that the hazardous substances specified in D. I. have not already been released at the facility. Explain why it is reasonable to believe that the hazardous substances identified in D. I. have never been present at the property if that is the reason a past release has been ruled out. The conclusions of the N. IV. assessment may in some cases be sufficient to meet this requirement. If the assessment indicates

it is likely that the hazardous substances have been present, environmental data or other information to demonstrate that the hazardous substances have not been released is needed to make this demonstration.

- D.V **This item is required for BEAs that are submitted with a Petition pursuant to Section 29a and is optional for BEAs only disclosed pursuant to Section 26(1)(c).** The BEA must describe how the body of information in the BEA can be used, and why it is sufficient, to distinguish a new release from contamination that existed at the time of the BEA.

Category S

- S. **Characterization requirements in addition to those performed in Categories N and D for BEAs performed where a specified use of the property will cause the same hazardous substances to be used as are known or likely to be present as property contaminants, or for BEAs performed when no limits on future hazardous substance use are identified:**
- S. I. No additional characterization needed, beyond that specified in N. I. and D. I.
- S. II. Information identifying and quantifying each of the known contaminants present, if those contaminants are hazardous substances intended to be used or otherwise present as a result of operations at the property or not excluded from future use (e.g., maximum and average concentrations, and estimates of the total mass of each contaminant within the property boundary). Statistical analyses may be presented to characterize the existing contaminant mass. Estimates of mass are only required if the BEA relies on contaminant mass as means of distinguishing a new release from existing contamination. Estimates may be particularly useful for area-wide or historical fill contamination.
- S. III. Information delineating the extent of known contamination within the property boundaries, if those contaminants are hazardous substances intended to be used or otherwise present as a result of operations at the property or not excluded from future use, and general projections as to their fate (relative to transport, decomposition, etc.). Include significant information about property features that influence contaminant migration (e.g., soil type, hydrogeologic conditions, surface features). Known point sources of hazardous substance release should be thoroughly investigated. Include information that documents both the vertical and horizontal extent of concentrations above the residential standards on the property, unless the BEA provides for a means of distinguishing a new release that does not rely on this type of characterization.
- S. IV. Investigation to confirm the presence of and to quantify and delineate the extent of any contaminants shown by the N. IV. assessment to potentially be on the property and which are not excluded from future use. Areas of likely release due to historical operations (e.g., spills, seepage lagoons, floor drains, dry wells, buried substances, USTs) should be thoroughly investigated and information presented which identifies the hazardous substance concentrations that already exist on the property from such sources. For an identified subset of the hazardous substances that will be used at the property, the conclusions of an N. IV. assessment may be sufficient to preclude the necessity for further investigation of those hazardous substances if it is clear that there is no reason to believe that they have ever been present at the property.
- S. V. **This item is required for BEAs that are submitted with a Petition pursuant to Section 29a and is optional for BEAs only disclosed pursuant to Section 26(1)(c).** The BEA must describe how the body of information in the BEA can be used, and why it

is sufficient, to distinguish potential contamination due to new releases from contamination that existed at the time of the BEA.

Alternative Approaches

Alternative approaches that provide a reliable basis to distinguish potential new hazardous substance releases from existing contamination may be presented in conjunction with the types of information detailed for Categories D and S, or in lieu of some of this information. Rule 909 allows for engineering controls, isolation zones, or other similar features that provide a verifiable means of assuring that any release that occurs in the future will be spatially separated from existing contaminated media, will be detected, and will be responded to in a timely manner, so as to prevent commingling with the existing contamination. All BEAs which rely on an engineering control, isolation zone, or other feature must still include, as a minimum, the information described for Category N above. The design of any engineering controls, isolation zones, or other features that will be used must be included. The purpose and function of all engineering controls, isolation zones, and stipulated conditions must be clearly defined in the BEA. Engineering controls and isolation zones may be relied upon by a person who is petitioning or disclosing the BEA to the DEQ. However, a BEA can rely on stipulated conditions other than those associated with isolation zones and engineering controls only if the BEA is submitted with a petition for determination by the DEQ.

Engineering controls, isolation zones, or other similar features, must be constructed and operational no later than 45 days after the earliest of the date of purchase, occupancy, or foreclosure if relied upon in the BEA as a means of distinguishing a new release from existing contamination. In special circumstances the 45 day time frame for installation of an engineering control or isolation zone can be extended, provided that the engineering control is in place prior to the use, storage or handling at the property of the hazardous substance that will be addressed by the engineering control, isolation zone, or similar feature.

If an engineering control, isolation zone, or similar feature cannot be installed within 45 days, the 45 day period can be extended provided that an affidavit is provided with the BEA, stating that the owner or operator has not used, stored, handled, or managed the hazardous substance on the property since the date of purchase, occupancy, or foreclosure and it will not be used until after the engineering control, isolation zone, or similar feature is operational. This includes the installation of double walled UST systems as an engineering control.

A person completing a BEA that relies on an engineering control, isolation zone or similar feature must maintain documentation that these features were installed as called for in the BEA, within the required time frame and in a satisfactory manner.

Engineering Controls

A BEA relying on engineering controls or other similar features must include stipulated conditions in the affidavit from the petitioner (Form EQP4400), or submitter (Form EQP4479), and the environmental professional (Form EQP4439), if required. The stipulated condition must state the following, unless different language is approved by the DEQ:

The submitter acknowledges that if there is a failure of an engineering control or similar feature identified in the BEA, and if a release occurs as a result of the failure, the BEA does not provide an exemption to liability for response activity necessary to address contamination resulting from the failure. The burden of distinguishing the release attributable to the failure of the engineering control from existing contamination shall be borne by the submitter according to Section 29 of Part 201.

Isolation Zones

A BEA relying on an isolation zone as a means of detecting a new release must include a stipulated condition in the affidavit from the petitioner (Form EQP4400) and the environmental professional (Form EQP4439) or submitter (Form EQP4479). The stipulated condition must state the following unless different language is approved by the DEQ:

The submitter acknowledges that if hazardous substance is detected in the isolation zone, the BEA does not provide an exemption to liability for necessary response activity. The burden of distinguishing a new release that has migrated beyond the isolation zone from existing contamination shall be borne by the submitter according to Section 29 of Part 201.

Stipulated Conditions/Special Cases (to be used only if DEQ determination is sought)

Due to cost or timing constraints, a person may elect not to sample for a specific hazardous substance that will be used in the future on the property or not to sample a particular area of the property. In these circumstances, the DEQ may, pursuant to Rule 909(2)(b), accept stipulated conditions in the petitioner's affidavit. If the petitioner chooses not to sample for a particular hazardous substance(s), as in (a) below, the hazardous substance(s) must be clearly listed in the BEA, the petitioner's affidavit, and the environmental professional's affidavit. If a particular area of the property is not being sampled, as in (b) below, a legal survey of the area that was sampled and covered by the BEA must be provided in the BEA unless the DEQ approves of an alternative property description as being unambiguous (e.g., "The north 100' of Lot 52, Developer's Plat"). Following are stipulated conditions that may be included:

- (a) *The petitioner acknowledges that the BEA does not provide sufficient environmental data with respect to a specific hazardous substance named in the BEA, and the petitioner acknowledges that the BEA does not provide an exemption to strict liability with respect to response activity required to address a release of the hazardous substance at the property.*
- (b) *The petitioner acknowledges that the BEA does not provide sufficient environmental data with respect to certain areas of the property, and the petitioner acknowledges that the BEA does not provide an exemption to strict liability with respect to response activity required to address contamination in those areas of the property. A legal survey of those areas covered by the BEA is provided in the BEA.*

The DEQ may approve other stipulated conditions on a case-by-case basis as part of a petition. Stipulated conditions other than those described above are not acceptable if the stipulated condition is used wholly, or in large measure, in place of a technical requirement

that is cost-effective and practical to achieve. A stipulated condition predicated on no future releases of hazardous substances occurring (i.e., good housekeeping) is unacceptable for Category S and D BEAs.

Required BEA Format

Pursuant to Rule 907(7), the BEA must be titled, and its contents organized, as follows:

**Baseline Environmental Assessment
Conducted Pursuant to Section 20126(1)(c)
of 1994 PA 451, Part 201, as amended,
and the Rules promulgated thereunder**

1. **Identification of Author and Date BEA was Conducted and Date BEA was Completed** - The person with the primary responsibility for the data assembly, interpretation, and technical conclusions, along with the dates when the BEA was conducted and completed.
2. **Introduction** - Explains general circumstances of the property with regard to past and intended activities, and in particular, identify which one of the three categories specified in the Technical Standards, (N, D, or S), is the basis upon which the BEA was conducted.
3. **Property Description and Intended Hazardous Substance Use** - BEA element N. I., and as appropriate, D. I., or S. I.
4. **Known Contamination** - BEA elements N. II. and N. III. and, as appropriate, S. II., N. III, D. II. and D. III.
5. **Likelihood of Other Contamination** - BEA element N. IV. and, as appropriate, D. IV. or S. IV.
6. **Alternative Approaches (if applicable)** - Detailed description of the specific features and controls of an alternative proposal as described in the section "Alternative Approaches."
7. **Conclusions** - The petitioner's conclusions as to how and why the assessment is sufficient to provide a basis to distinguish potential future hazardous substance releases from contamination already existing on the property. BEA element N. V., D. V., S. V., if applicable, or detailed discussion as to how an Alternative Approach provides a sufficient basis for distinguishing a future release from existing contamination.
8. **References** - Identify sources of any property-related data, information, or conclusions not included as attachments.
9. **Attachments** - Copies of property specific data and reports generated or used to provide the basis for the assessment including Phase I and II Assessments, and Remedial and Hydrogeological Investigations. If engineering controls, isolation zones, or similar features are presented as the basis for BEA adequacy, specifications for the construction and operation of the controls must be included.

Disclosure to DEQ

BEAs must be disclosed to the department by new property owners or operators in order to establish an exemption from liability for existing contamination pursuant to Section 26(1)(c)(ii). The BEA must be conducted prior to or within 45 days after the earlier of the date of purchase, occupancy, or foreclosure, and completed within 15 days of the time allowed under Section 26(1)(c) or Rule 903(8). In order for a BEA to satisfy the Section 26(1)(c)(ii) disclosure

obligations, it must be submitted with DEQ Form EQP4446 titled: "Disclosure of a BEA" no later than 8 months after the earliest of the date of purchase, occupancy, or foreclosure.

Petition for Agency Determination(s)

Section 29a allows a person to petition the DEQ within 6 months after completion of a BEA for a determination that that person meets the requirements for an exemption from liability under Section 26(1)(c) and, in conjunction with that exemption, a determination that the proposed use of the property satisfies the person's obligations under Section 7a. BEAs submitted with a petition for agency determination must be submitted with DEQ Form EQP4445 titled: "Petition for BEA Determination and Optional Determination of Compliance with Section 7a." A fee of \$750 must accompany a petition that requests an agency determination. Use of this form to submit a BEA satisfies Section 26(1)(c)(ii) obligations to disclose the BEA to the DEQ (it is not necessary to submit both forms nor the BEA two times). Each person (individual or other entity who is seeking a determination on a BEA) must submit a separate Petition and fee with the BEA. An exception to this requirement will be made for joint owners of property as tenants in common, tenants in entirety, or joint tenants as long as the petitioners will be conducting the same activities on the property and their relationship is noted on Form EQP4445 or EQP4446, as appropriate, in the "Petitioner" or "Submitter" blank. You may contact the DEQ District Office that serves the area in which the property is located to determine if fewer copies of the BEA can be submitted in these special cases. For Petitions submitted by joint owners, only one Petition form and Petition fee will be necessary; however, each person will need to complete an Affidavit in Support of a Petition for a BEA Determination and Optional Determination on Compliance with Section 7a.

Rule 911(8) provides that if the DEQ does not respond to a petition within 15 business days by either providing comments as described below or through issuing a written determination, and if the delay prevents the petitioner from curing deficiencies in the BEA within the time frames allowed by the Part 9 Rules, then the time allowed for the petitioner to cure any deficiencies is the time that would have been available to the petitioner if the DEQ had responded on the 15th business day.

Services Covered by BEA Review Fee

A fee of \$750 is required for all BEA Petitions submitted for DEQ review pursuant to Section 29a. No fee is required to accompany a BEA disclosed pursuant to Section 26(1)(c)(ii). The following services are covered by payment of the fee for BEA Petition review. This section describes only the covered services and does not address the required timing of submittals to the DEQ.

1. Review of and determination regarding the initial BEA and other required materials.
 - The DEQ may provide comments on any element of a BEA in a verbal and brief written communication to the "contact person" identified on the petition form, before issuing a determination. If the petitioner responds to the comments with additional information, the DEQ will make a determination within 15 business days of receipt of the additional information. If a response is not received from the petitioner within 15 business days of the original contact or a time period mutually agreed upon by the DEQ and the petitioner, the DEQ will issue a determination that the petitioner does not meet the requirements for an exemption under Section 26(1)(c).
 - If the petitioner chooses to receive a determination without responding to the DEQ's comments, the DEQ will provide a determination within 15 business days of being informed of the petitioner's decision.

- If the DEQ determines that a petition is administratively incomplete (e.g., missing any element required by the Part 9 Rules to be submitted), the DEQ may return the petition within 15 days of its receipt, without making a determination. This in no way alters the deadlines for completion and disclosure required under Part 201 and the Part 9 Rules.
 - No refund will be granted unless the BEA is returned without being reviewed (e.g., the petition shows that the BEA is not valid).
2. One review of and determination regarding adequacy of revisions to the BEA or other required materials if the initial determination identifies any deficiencies in the BEA or other petition documents.
 3. Review of and determination regarding the initial Section 7a Compliance Analysis if the petitioner exercises their option to seek a determination of compliance with Section 7a requirements.
 4. One review of and determination regarding a revised Section 7a Compliance Analysis if one is prepared in response to deficiencies identified in the initial determination.

If additional iterations of the BEA or Section 7a Compliance Analysis are submitted for DEQ determination(s), they must be accompanied by an additional \$750 fee. Submittals beyond the first revisions (as described above) which are not accompanied by the fee will not receive determinations. Such submittals may be retained in the DEQ district files.

Completing Affidavits

The affidavits associated with BEA submittals must indicate where the form was completed. For example, if the state in which an affidavit is signed is Indiana (as reflected by the "State of" and "County of" blanks which appear in the top left of each affidavit), the affiant's signature must be notarized in Indiana, not in Michigan. Conversely, if the "State of" blank is completed as "Michigan," and the "County of" blank completed as "Ingham," the affidavit must be signed and notarized in Ingham County, Michigan. Inconsistencies appearing in these forms may result in the denial of a BEA petition.

If, due to extenuating circumstances, you are unable to complete an affidavit using the model language, contact the district office in which the facility is located for assistance.

References

The following documents may be of assistance in conducting BEAs:

- **Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended and the Part 9 and Part 10 Rules.**
- **DEQ ERD and Waste Management Division Guidance Document**

Verification of Soil Remediation

- **DEQ Environmental Response Division Operational Memoranda**

#6 Analytical Detection Level Guidance

#12 Alternate Soil Leaching Procedures

#13 Data Quality Objectives, Review of TMDL Excursions and Evaluation of Laboratory Data

#15 Default Cleanup Criteria

#16 Sample Preservation, Handling, and Holding Time Guidelines

#18 Part 201 Generic Cleanup Criteria

Operational memoranda may be revised or replaced by the DEQ periodically. It is the responsibility of the submitter to ensure the most current operational memoranda are used.

These documents and current operational memoranda can be obtained by contacting the DEQ, ERD at 517-373-4800 or from the Internet at **www.michigan.gov/deqrrd**.

The following document is available from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428, Phone 610-832-9500.

- **ASTM Document #E1527-97; "Standard Practice for Environmental Assessments: Phase I Environmental Assessment Process"**

SUMMARY CHART
MINIMUM TECHNICAL STANDARDS FOR SECTION 26(1)(c) BEAs
 (see text for full explanations and details)

<u>CIRCUMSTANCES OF FUTURE PROPERTY USE FOR WHICH BEA IS PERFORMED</u>	CHARACTERIZATIONS BY BEA				
	<u>I. Of Subject Property</u>	<u>II. Of Known Contaminants Identities and Quantities</u>	<u>III. Of Known Contaminants Distribution and Fate</u>	<u>IV. Of Likelihood of Unknown Contamination</u>	<u>V. Summary Rationale</u>
Category N. Basic characterizations for <u>ALL BEA's</u> , including those for properties at which there will be <u>no hazardous substance use</u> .	Legal property description, scaled map/survey, property tax identification no., photographs, prior BEAs.	Names, CAS nos. and concentrations of hazardous substance known to be present in excess of the residential cleanup standard. Identify USTs and abandoned containers .	Identification of the environmental media and general locations at which the known hazardous substances are present on the subject property.	An assessment and conclusions as to the likelihood that other hazardous substances are also present on the subject property.	Include specific statement that there will be no significant hazardous substance use. (Required for Petitions.)
Category D. <i>ADDITIONAL</i> characterizations for properties which will use <u>different hazardous substances</u> from those known or likely to already be present at the property.	Identification and CAS nos. of the hazardous substances which will be used on the property in the future.	No additional characterization needed beyond N. II.	In addition to the characterization in N.III., identify location of known contamination and the impacted media.	A demonstration that the hazardous substances which will be used at the property have not already been released to the environment at this location.	Explain how new releases would be distinguished from existing contamination. (Required for Petitions.)
Category S. <i>ADDITIONAL</i> characterizations for properties which will use the <u>same hazardous substances</u> as are already known or likely to be present as property contaminants; <u>OR</u> for properties at which any hazardous substance might be used as <u>no limit on future use</u> is identified.	No additional characterization needed beyond N.I. and D.1.	Quantification of the amount of known contamination on the property for hazardous substances to be used or not excluded from potential use.	Delineation of the extent and projected fate of the known property contaminants.	Investigation to confirm the presence and quantity of likely contaminants and delineate their extent.	Explain how new releases would be distinguished from existing contamination. (Required for Petitions.)

Note: Different or additional characterization will routinely be needed to determine compliance with Section 7a obligations

INSTRUCTIONS FOR SECTION 7A COMPLIANCE ANALYSIS
Relative to Section 20129a of 1994 PA 451, as amended,
and the Part 9 Rules

Section 7a(1) provides that a person who owns or operates property that he/she has knowledge is a facility must do all the following, unless they are covered by the provisions of Section 7a (4) or (5).

- 1) Undertake measures to prevent exacerbation of existing contamination.
- 2) Exercise due care by undertaking response activity necessary to mitigate unacceptable exposure to hazardous substances, mitigate fire and explosion hazards due to hazardous substances, and allow for the intended use of the property in a manner that protects the public health and safety.
- 3) Take reasonable precautions against the reasonably foreseeable acts or omissions of a third party and the consequences that could result from those acts or omissions.

Owners and operators should be aware that their obligations under Section 7a begin when they become the owner or operator, and are not postponed by use of the 6 month period to prepare a Section 7a Compliance Analysis and/or Plan for Response Activity.

The Part 10 Due Care Rules provide further guidance on implementing the requirements of Section 7a.

Pursuant to Section 29a(1), a person may petition the DEQ for a determination that the proposed use of the property satisfies the person's obligations under Section 7a. This determination is optional, at the request of the petitioner. A person who wants a DEQ determination on their Section 7a Compliance Analysis (Section 7a CA) may make the request either at the time the petition for the BEA determination is submitted, or, as provided for under Rule 915, after submittal of the BEA petition, but not later than 6 months from the date of completion of the BEA. If the request is not submitted at the same time the original BEA petition is submitted, then the Section 7a CA must be submitted with a copy of the petition that was submitted with the BEA (Form EQP4445) and a cover letter explaining that the Section 7a CA request is in conjunction with a prior request for determination relative to the BEA for the property. As with BEAs, timing of a request for determination on the adequacy of a Section 7a CA should anticipate the potential need to cure deficiencies prior to the expiration of the 6 month time period.

The degree of characterization required in a Section 7a CA is dependent on the nature of the contamination at the property, the proposed use, and construction or other activities that will occur to allow that proposed use. It does not require consideration of the hazardous substances proposed to be used at the property as a part of the future operation. In most circumstances, the extent of environmental characterization performed for Category N, most Category D, and some Category S BEAs is not adequate to enable the department to render a determination on a person's Section 7a obligations.

The outline of a Section 7a CA that follows describes a set of information which would generally be sufficient for the DEQ to make a determination pursuant to Section 29a. It includes factors that may not be applicable for many cases. It is intended to be comprehensive, and to prompt persons preparing Section 7a CAs to evaluate potentially relevant issues. Information beyond that required by the BEA may be necessary, but full characterization of the extent of contamination may not be required if that information is not required to assess compliance with any element of Section 7a. Elements which are not included in a Section 7a CA for a specific property can be addressed by a single narrative explanation that provides rationale for omitting them, or by noting for each point in an outlined format why it is not relevant to the facility.

If a facility owner or operator is not requesting a determination of Section 7a compliance under Section 29a, a Section 7a CA, as described in these Instructions, is not required. However, Rule 1003(4) requires a person subject to the provisions of Section 7a to maintain documentation of compliance with Section 7a and to provide such documentation to the DEQ upon request.

If the property use changes in the future, the potential exposure pathways must be reassessed at that time and documentation of compliance with Section 7a must be maintained.

Section 7a Compliance Analysis

The Section 7a CA has four main elements that are described in detail below:

1. detailed characteristics of property use,
2. hazardous substance information,
3. plan for response activities (if necessary), and
4. evaluation and demonstration of compliance with Section 7a obligations.

If response activities are required to satisfy Section 7a CA obligations, a plan for response activity must be included in the Section 7a CA. The Section 7a CA must address all facility contaminants that exceed generic residential criteria. If a hazardous substance is a facility contaminant and will also be used, stored, managed, or handled on the property as part of future operations, the Section 7a CA obligations do not apply to that hazardous substance when used, stored, managed, or handled in future operations at the property.

1. Detailed Characteristics of Property Use

This section should include a description of current and proposed property use. This should include, as appropriate to the circumstances:

- a. A detailed description of the current and proposed uses of the property and a detailed site map.
- b. A description and map of existing infrastructure features and conditions of the infrastructure (e.g., sewers and utilities) and a description of water and waste flow pathways such as roof drains, storm sewers, floor drains, septic tanks, and tile fields.
- c. A description of any construction or demolition (e.g., earth moving, grading, drainage, dewatering, and building plans, including modification to subsurface utilities, sewers, or structures) proposed for the property.

2. Hazardous Substance Information

This section contains all information regarding existing abandoned or discarded containers (as defined in the Part 10 Rules), and other environmental contamination at the property that is relevant for the Section 7a CA. The relevant portions of the BEA and its supporting documentation may be referenced and summarized here. Information on the nature and extent of contamination may have to be supplemented in this section beyond that included in the BEA. Hazardous substance information regarding facility contaminants may include (but is not limited to):

- a. Elements S. II. and S. III. of the BEA minimum technical standards (i.e., levels of known contamination and delineation of the extent of hazardous substances), and comparison to relevant criteria for all contamination at the property.
- b. Elements N. II. (b) of the BEA minimum technical standards (i.e., identification, quantity, and location of all hazardous substances present in any UST, and abandoned or discarded containers at the property).

- c. Details of hazardous substance concentration, fate, and transport.
- d. Human exposure pathways at the property that are or may be complete in light of the intended property use.
- e. For those exposure pathways which are not complete, an explanation of the reason (e.g., drinking water is provided exclusively by a municipal system). Only those exposure pathways that may be complete in light of the intended use need to be evaluated to determine if exposure will be unacceptable.
- f. The category of generic criteria that is applicable to the intended land use (e.g., if the proposed use of the property is commercial, commercial criteria should be considered).
- h. Identification of any potential fire or explosion hazards.
- g. For evaluations prepared to document that conditions do not result in unacceptable exposures through inhalation of indoor air, the DEQ will accept a demonstration of compliance with 1974 PA 154 (Act 154), the Michigan Occupational Safety and Health Act (MIOSHA), and the rules promulgated thereunder, **if** all the following conditions are met **and** a written statement confirming compliance with MIOSHA is provided to the DEQ.
 - i. The risk being evaluated results from inhalation of hazardous substances in indoor air within an active commercial or industrial workplace regulated under Act 154 and the rules promulgated thereunder.
 - ii. The exposure to hazardous substances from environmental contamination is a portion of the exposure to which workers are otherwise subject from process-related sources of the same hazardous substance.
 - iii. The risk to non-workers, if any, from inhalation of indoor air has been evaluated and is acceptable, consistent with Section 20a, the cleanup criteria of Part 201.

3. Plan for Response Activities (if necessary)

A plan for response activity (PRA) must be included in any Section 7a CA where response activities are necessary for a person to satisfy his or her obligations under Section 7a and the Part 10 Rules. The PRA is prospective; it must consider the intended use of the property, and address response activities that will be conducted to meet the due care requirements. Response activities that have been completed should be addressed in Section 4 below. Examples of response activities include: fencing a property to restrict access, removal of free product, paving contaminated soils to prevent contact, disposing of discarded or abandoned containers containing hazardous substances, or providing notice to the DEQ of the presence of abandoned or discarded containers.

The scope of the PRA is dependent on the nature and extent of the contamination at the property. The PRA should describe how the response activities to be undertaken will meet the requirements of Section 7a. The PRA is based on a specific property use and property specific conditions. The PRA should include, as appropriate:

- a. Detailed description of response activities proposed to prevent or mitigate unacceptable exposure to hazardous substances or conditions identified in Section 2.
- b. Discussion of the effectiveness and reliability of response activities identified in Section 3.a.
- c. Notification to the DEQ in writing of the presence of discarded or abandoned containers at the property that contain a quantity of hazardous substance which is or may become injurious to the public health, safety, welfare, or the environment if such notice was not provided earlier. If notice was previously provided to the DEQ, on DEQ Form EQP4476 "Notice Regarding Discarded or Abandoned Containers," provide a copy of the completed notice in the Section 7a CA. This notice must be provided within 6 months of the effective date of the Part 10 Rules, or 45 days of becoming the owner or operator, or 45 days of acquiring knowledge of the discarded or abandoned containers, whichever is later. Notification is not required if an owner or operator disposes of such containers

and their contents according to all applicable laws and regulations within 45 days of the effective date of the Part 10 Rules, or 45 days of becoming the owner or operator, or 45 days of acquiring knowledge of the containers, whichever is later.

- i. If proposing to dispose of discarded or abandoned containers and their contents, whether or not notification is required, the PRA should describe how the containers and their contents will be disposed of, in order to meet applicable laws.
 - ii. If discarded or abandoned containers have already been disposed of, the response activities performed should be described in Section 4 below.
- d. A description of any formal or informal restrictions on the use of the property that are proposed to assure the integrity of the response activities, including a description of how the use restriction will be implemented.
 - e. An implementation schedule.
 - f. A detailed operation and maintenance plan.
 - g. A detailed monitoring plan.

4. Evaluation and Demonstration of Compliance with Section 7a Obligations

This section is an evaluation of the information in previous sections that discusses and demonstrates how the proposed use satisfies a person's obligations under Sections 7a(1)(a), (b), and (c). If response activities have been completed, this section should provide detailed descriptions of those activities and explain how they complied with the requirements of Section 7a.

- a. Exacerbation:
 - i. Explain how and why the proposed use of the property will not exacerbate existing contamination. See Section 1(1)(n) for the definition of "exacerbation".
 - ii. Explain how and why the proposed use will not increase response costs. Rule 1007 states that an activity undertaken by an owner or operator is not exacerbation through an increase in response activity costs if the following conditions are met: the increase in cost is small in relation to the total cost to remediate the site to the relevant land-use based cleanup criteria, **and** the activity undertaken provides environmental or public health benefits. The rule also provides that there may be other circumstances which an owner or operator can demonstrate are not a change in facility conditions that increases response activity costs.
- b. Due Care:
 - i. Explain how and why unacceptable exposures to hazardous substances identified in Section 2 or hazards identified in Section 2.d. will not exist, or will be prevented or mitigated by the PRA. If appropriate, this should include an explanation of how USTs, and abandoned or discarded containers will be managed to prevent a release or an exposure. If USTs have been removed, or if discarded or abandoned containers have been disposed of, provide a description of the response activities that were conducted and how they complied with applicable state and federal laws.
 - ii. If a fire or explosion hazard has been or must be mitigated, explain what actions were taken or will be taken. Indicate which of the notices required under Rule 1019 have been made.
 - iii. If appropriate, explain why response activities are not necessary to prevent or mitigate unacceptable exposure.
 - iv. Describe how exposures identified in Section 2.d. above will be communicated to third parties and how the notice requirements of Rule 1017 will be met.
- c. Reasonable Precautions:
 - i. Explain what precautions will be taken against the reasonably foreseeable acts or omissions of a third party and demonstrate how those precautions will be effective in satisfying the requirements of Section 7a (1)(c).

Submittal of a Section 7a Compliance Analysis Subsequent to a BEA
as Part of an Optional Request for Determination
of Compliance with Section 7a

A person who elects to submit a request for determination of compliance with Section 7a in conjunction with a BEA determination has 6 months from the time that the initial BEA is complete to submit their completed Section 7a CA and, if required, PRA.

The DEQ recognizes that some time after purchase or occupancy may be required to fully develop plans for property use. The 6 month period is intended to allow for comprehensive site plans to be developed. In this way, the Section 7a CA can reflect BEA data and refined site development plans that may be completed only after purchase or occupancy.

Owners and operators should be aware that their obligations under Section 7a begin when they become the owner or operator, and are not postponed by use of the 6 month period to prepare a Section 7a CA and/or PRA.

Materials submitted for the purposes described in this section must be accompanied by a copy of the original Petition that was submitted with the BEA (Form EQP4445) and a cover letter explaining that either:

- (a) the submittal provides information to cure deficiencies in the Section 7a CA, or
- (b) that the Section 7a CA request is in conjunction with a prior request for determination pursuant to Section 29a.

Required Section 7a Compliance Analysis Format

A Section 7a CA must be assembled and presented in the following format. It may be submitted as a separate document from the BEA, or as part of the same document following the BEA conclusion. The Section 7a CA should begin with the title:

**Section 7a Compliance Analysis
For a Property at (insert location) Requested in Conjunction With
a Baseline Environmental Assessment**

The materials should be presented in the following order and manner:

1. **Detailed Characteristics of Property Use** - Present information detailing how activities on the property will be conducted.
2. **Hazardous Substance Information** - Cite by reference information presented in the BEA, and present any other information available and applicable to the review.
3. **Plan for Response Activities (PRA)** - If necessary, clearly identify within this plan how measures proposed to satisfy Section 7a will be implemented.
4. **Evaluation and Demonstration of Compliance with Section 7a Obligations** - Discuss and demonstrate how the proposed use, and any proposed response activities, will comply with Section 7a (1) (a), (b), and (c).

INSTRUCTIONS FOR NOTICE REGARDING DISCARDED OR ABANDONED CONTAINERS (FORM EQP4476)

(Under the authority of Part 201, 1994 Act 451, as amended, and the Rules promulgated thereunder)

Applicability

Both the Part 9 Rules (Baseline Environmental Assessment (BEA)) and the Part 10 Rules (Compliance with Section 20107a) promulgated under Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, contain requirements related to discarded and abandoned containers.

To be protected from liability for hazardous substances contained in discarded or abandoned containers located on property at which a BEA is conducted, the Part 9 Rules require that information related to the containers be provided to the DEQ in the BEA. This form, Notice Regarding Discarded or Abandoned Containers (EQP4476), must be included in a BEA if the submitter is seeking protection from liability for hazardous substances contained in the discarded or abandoned containers as provided for in the Part 9 Rules. The BEA minimum technical standards related to discarded and abandoned containers are found in Rule 907(2)(f), (3)(f), and (4)(g).

In addition, the Part 10 Rules require that an owner or operator of property with Section 7a ("Due Care") obligations under Part 201 notify the department of the presence of discarded or abandoned containers that contain hazardous substances in a quantity that is or may become injurious to the public health, safety, welfare, or environment. Use of this form is acceptable, but not required, to satisfy the requirements of the Part 10 Rules. This notification requirement discussed above does not apply to an owner or operator who disposes of discarded or abandoned containers and their contents according to applicable state and federal laws within 45 days of the effective date of the Part 10 Rules, or 45 days of becoming the owner or operator, or 45 days of acquiring knowledge of the containers, whichever is later.

At a property where a BEA was not conducted or where a BEA was conducted prior to the effective date of the Part 10 Rules, completion and submission of this form within the required time frames, will satisfy the notification requirements under Rule 1015(1).

Identification of underground storage tanks (USTs) using this form does not eliminate or modify the obligations of an owner or operator to comply with other state and federal requirements applicable to USTs, including registration of the tank and confirmed release reporting.

Definitions

"Container" is defined in the Part 10 Rules and means, "a barrel, drum, tank, vessel, surface impoundment, pipeline, or other receptacle regardless of size that contains a hazardous substance".

Materials Related to Notification Form

This package includes the instructions for completing Form (EQP4476) which includes a table to identify containers, and a list of DEQ office locations which may be contacted for assistance in completing this form.

Completing Form EQP4476

1. Complete the attached form including the table.
2. Questions need to be answered to the degree the requested information is available, consistent with the definition of "all appropriate inquiry" in Rule 1001(b). If an item is not applicable, mark N/A in the appropriate location on the form or table. Failure to complete each item on the form and table will result in the form being considered incomplete.
3. Complete the table for each underground storage tank and discarded or abandoned container or group of similar containers according to the following directions.

A. LOCATION

Referencing the drawing required in item 4 on the Form, identify the approximate location of each container or group of containers. This only needs to be an approximate location.

B. CONTAINER SIZE AND TYPE

Describe the size and type of container. Examples include: 55-gallon steel drum, 35-gallon fiber drum, 10,000-gallon UST, 250-gallon aboveground storage tank, lagoon (100' x 50' x 5'), pipeline (provide diameter and length), or silo (provide volume). If the volume of the container is unknown, provide an estimate or indicate unknown. For example, if the container is a surface impoundment, but the depth is unknown, provide the known measurements. Indicate if the volume is an approximation.

C. NUMBER OF CONTAINERS

Provide either an exact count, if practical, or an approximate number of each type of container identified.

D. VOLUME OF HAZARDOUS SUBSTANCE(S)

Provide the volume of hazardous substance(s) present in each container, if known. If unknown, make a reasonable estimate. If it is impractical to estimate the volume, provide an explanation of why it is impractical to estimate the volume.

E. CONTENTS

It is not necessary to conduct analytical sampling to determine the contents of a container. However, if the contents are known, provide the available information. Provide information about the contents if available, for example, a visual description of the contents (e.g., black tarry-like substance), or wording on labels, if the labels are believed to reflect the current contents of the container.

F. CONDITION OF THE CONTAINER

Describe the condition of the container before any action you may have taken to manage or contain the contents, if the current condition of the container is significantly different. Provide the freeboard available for surface impoundments and lagoons. This information is requested to allow the DEQ to assess the likelihood of a release.

G. PHOTOGRAPHS PROVIDED

Indicate whether photographs have been provided for each of the container types identified.

4. This form must be included in a BEA if the submitter is seeking liability protection from hazardous substance(s) contained in the discarded or abandoned containers.
5. If this form is being submitted to the DEQ not in conjunction with a BEA, the form should be sent directly to the DEQ office which serves the county where the property is located. A list of DEQ offices, their addresses, telephone numbers, and the counties served is attached. Please label the outside of the envelope "Rule 1015 Notice."
6. Any person who intentionally submits false or fraudulent information to the DEQ is guilty of a felony and may be subject to penalties under Section 20139, including fines of up to \$25,000 per violation.



FOR DEQ USE ONLY
ITS# _____
Site ID# _____

NOTICE REGARDING DISCARDED OR ABANDONED CONTAINERS (FORM EQP4476)

(Under the authority of Part 201, 1994 Act 451, as amended, and the Rules promulgated thereunder)

Use this form to disclose information related to underground storage tanks (UST) and discarded or abandoned containers required in a Baseline Environmental Assessment (BEA) pursuant to the Part 9 Rules. Submission of this form in a BEA also satisfies the notification requirements of Rule 1015(1) of the Part 10 Rules. This form may also be used, NOT in conjunction with a BEA, to satisfy the notification requirements of Rule 1015(1) of the Part 10 Rules.

All persons providing this notice must complete Section I. Section II must be completed by only those persons who are submitting this form NOT in conjunction with a BEA.

SECTION I										
1. Name and Address of person subject to Section 7a: _____ _____ _____ _____	2. Address/location of property where containers are located: _____ _____ _____ County: _____									
3. What is your status relative to the property? <table style="margin-left: 200px; border: none;"> <tr> <td></td> <td style="text-align: center;">Current</td> <td style="text-align: center;">Prospective</td> </tr> <tr> <td style="padding-right: 20px;">Owner</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="padding-right: 20px;">Operator</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>			Current	Prospective	Owner	<input type="checkbox"/>	<input type="checkbox"/>	Operator	<input type="checkbox"/>	<input type="checkbox"/>
	Current	Prospective								
Owner	<input type="checkbox"/>	<input type="checkbox"/>								
Operator	<input type="checkbox"/>	<input type="checkbox"/>								
4. Provide a scaled map or drawing of the property that identifies the property boundaries and surrounding property uses. Depict the approximate location(s) of all known discarded or abandoned containers on the drawing. Refer to the locations when completing the attached table.										
5. Provide photographs, if practical, that depict the location and general condition of the containers.										
6. Complete the attached table.										
7. If this form is being submitted in conjunction with a BEA, skip Section II and go to Signature section.										

SECTION II	
8. Did you previously submit a BEA to the DEQ for this property? <input type="checkbox"/>	Yes No <input type="checkbox"/> <input type="checkbox"/> If yes, provide the following information:
8a. Provide the date the BEA was submitted. _____	
8b. Provide the BEA Disclosure or Petition Number, if available. _____	
9. Do you anticipate submitting a BEA for the property?	Yes No <input type="checkbox"/> <input type="checkbox"/>
10. Provide the date you became the owner or operator of this property. _____	
11. When did you first acquire knowledge of the UST(s) or discarded or abandoned container(s)? _____	

With my signature below, I certify that the information provided herein is true and accurate to the best of my knowledge and belief. I understand that intentionally submitting false information to the DEQ is a felony and may result in fines of up to \$25,000 for each violation.

Signature of owner or operator or person legally authorized by owner or operator _____
Date

Name (typed or printed) _____
Title (typed or printed)



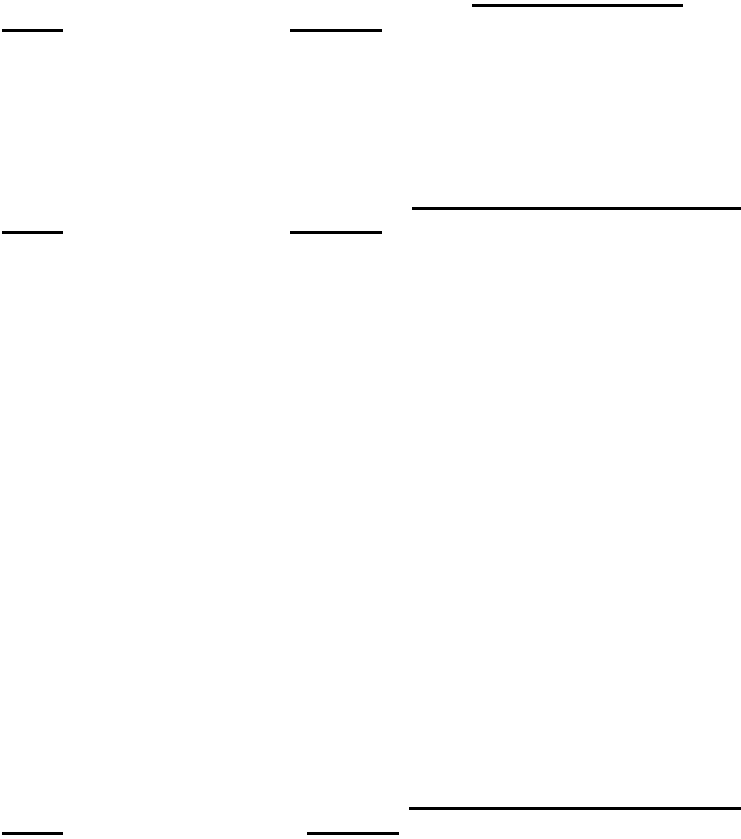
NOTICE REGARDING UNDERGROUND STORAGE TANKS AND DISCARDED OR ABANDONED CONTAINERS

A	B	C	D	E	F	G
LOCATION	CONTAINER SIZE AND TYPE	NUMBER OF CONTAINERS	VOLUME OF HAZARDOUS SUBSTANCE(S)	CONTENTS	CONDITION OF CONTAINER	PHOTOS PROVIDED

DEQ Environmental Response Division

For submittals of BEAs and other required materials

[Click on District Map](#)



**INSTRUCTIONS FOR DISCLOSURE OF A BASELINE ENVIRONMENTAL ASSESSMENT
(FORM EQP4446(REV.3/99))**

(Under the authority of Part 201, 1994 Act 451, as amended, and the Rules promulgated thereunder)

These are the instructions for disclosure of a BEA to the Michigan Department of Environmental Quality ("DEQ") in accordance with the provisions of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, Section 20126(1)(c)(ii), and the Rules promulgated thereunder ("Part 201 Rules.") This is the form for disclosing a BEA to the DEQ if you are NOT requesting an optional determination of BEA adequacy and if the BEA was complete after the effective date of the BEA rules. IF YOU WANT TO PETITION THE DEQ FOR A DETERMINATION UNDER SECTION 20129a, DO NOT USE THIS FORM, INSTEAD USE FORM EQP4445, PETITION FOR BEA DETERMINATION.

1. The BEA and related materials should be bound and submitted with separate sections for all materials CLEARLY marked with tabs or dividers.
2. A table of contents listing each section of your disclosure should follow the disclosure form.
3. Any person who intentionally submits false or fraudulent information to the DEQ is guilty of a felony and will be subject to the penalties under Section 20139, including fines of up to \$25,000 per violation.
4. BEAs should be sent directly to the DEQ office which serves the county where the property is located. A list of DEQ offices, their addresses, telephone numbers, and the counties served is found in Appendix A. Disclosures will not be acknowledged. The sender is responsible for submitting materials using a method that provides proof of delivery, if such proof is desired.
5. Disclosures must be submitted to the DEQ no later than 8 months after the earliest of the date of purchase, occupancy, or foreclosure.



FOR DEQ USE ONLY
BEA Disclosure # _____

**DISCLOSURE OF A BASELINE ENVIRONMENTAL ASSESSMENT
 (FORM EQP4446(REV.3/99))**

(Under the authority of Part 201, 1994 Act 451, as amended, and the Rules promulgated thereunder)

DO NOT use this form for requesting a Baseline Environmental Assessment ("BEA") adequacy determination, OR if the property is not a facility, OR if the BEA was complete before the effective date of the BEA rules. Please answer the following questions as completely as possible.

Name and address of submitter* (individual or legal entity): _____ _____ _____	Status relative to the property: <table style="margin-left: 40px;"> <tr> <td></td> <td style="text-align: center;">Former</td> <td style="text-align: center;">Current</td> <td style="text-align: center;">Prospective</td> </tr> <tr> <td>Owner*</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>Operator*</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>		Former	Current	Prospective	Owner*	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Operator*	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Address/location of property where BEA was conducted: _____ _____ _____ County: _____
	Former	Current	Prospective											
Owner*	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>											
Operator*	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>											

Provide the property tax identification number(s) or, if applicable, the ward and item number(s) for the property identified in the BEA. Required pursuant to Rule 907.

Contact person _____ Telephone # _____

If the address of the person seeking liability protection above is different from the address that should be used to correspond with the contact person, please provide the contact person's address:

Check the appropriate response to each of the following questions.

1. **Is it known that the source of contamination at the property is primarily from any of the following?**

	YES	NO
• A leaking underground storage tank (UST) regulated under Part 213, 1994 PA 451, as amended.	<input type="checkbox"/>	<input type="checkbox"/>
• A licensed landfill or solid waste management facility.	<input type="checkbox"/>	<input type="checkbox"/>
• A licensed hazardous waste treatment, storage, or disposal facility.	<input type="checkbox"/>	<input type="checkbox"/>
• Oil and gas development related activities.	<input type="checkbox"/>	<input type="checkbox"/>

The source of the release that resulted in this property becoming a "facility" will determine which DEQ division will maintain a file regarding this BEA.

2. **Based on the Part 201 Rules, this BEA is a:**

Category N	<input type="checkbox"/>
Category D	<input type="checkbox"/>
Category S	<input type="checkbox"/>

3. **Is the property at which the BEA was conducted a "facility"* as defined by Section 20101?** If the answer to this question is NO, do not submit the BEA to the DEQ.

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>

4. **Was the BEA conducted* prior to or within 45 days after the date of purchase*, occupancy, or foreclosure of the property, whichever is earliest, and completed* not more than 15 days after the date required by Section 20126(1)(c) or Rule 299.5903(8)?** YES NO

 If the answer to either portion of this question is no, you are ineligible for an exemption from liability based on the BEA.
5. **Is the BEA being disclosed to the DEQ no later than 8 months after the earliest of the date of purchase, occupancy, or foreclosure?** All disclosures pursuant to Rule 919(3) must be submitted to the DEQ no later than 8 months after the earliest of the date of purchase, occupancy, or foreclosure. YES NO
6. **Are any USTs or abandoned or discarded containers identified in the BEA?** If yes, this information must be provided on Form EQP4476. YES NO
7. **Does this BEA rely on an isolation zone or an engineering control that requires an affidavit pursuant to Rule 299.5909(3) or 299.5909(4)?** If yes, a completed affidavit, Form EQP4479, must be attached or the BEA will not be considered complete. YES NO

With my signature below, I certify that the enclosed BEA and all related materials are complete and accurate to the best of my knowledge and belief. I understand that intentionally submitting false information to the DEQ is a felony and may result in fines up to \$25,000 for each violation.

Signature of Submitter: _____ Date _____
 (Person legally authorized to bind the person seeking liability protection)

Name (Typed or Printed) _____
 Title _____

INSTRUCTIONS FOR FORM EQP4479
AFFIDAVIT IN SUPPORT OF A DISCLOSURE
RELYING ON ISOLATION ZONES OR ENGINEERING CONTROLS OR OTHER SIMILAR
FEATURES FOR A BASELINE ENVIRONMENTAL ASSESSMENT

The lettered instructions below explain what information should be inserted in the corresponding blank shown on the Sample Affidavit.

- A. The state in which the affiant signs the affidavit.
- B. The county in which the affiant signs the affidavit.
- C. The name of affiant -- the individual (not the organization) who will be signing the affidavit.
- D. Identify the affiant's title in the organization. For example, *President of Land, Inc., Director of Parks, City of Brownfield, or Owner of Growth Properties*. If the Submitter is not an organization, affiant should state *an Individual*.
- E. Identify the name of the organization acquiring the interest in the property for which the liability protection is being sought. If an individual, identify *self*.
- F. The address of the Submitter.
- G. Select and fill in as applicable: *purchased, intends to purchase, occupied, intends to occupy, foreclosed on, intends to foreclose on*.
- H. The address of the property for which the BEA was performed.
- I. The date on which the property transaction (purchase, occupancy, foreclosure) is expected to be or was completed.
- J. The date the BEA was conducted.
- K. The date the BEA was completed.
- L. Select and fill in as applicable: *purchase, occupancy, foreclosure*.
- M. Provide stipulation. The stipulation language for engineering controls or other similar features and for isolation zones is provided in the Section "Alternative Approaches" in the "Instructions for Preparing and Disclosing Baseline Environmental Assessments." Modifications to this language cannot be made without DEQ approval.
- N. Signature of the individual, if the submitter is an individual, or a person legally authorized to bind the submitter, if the submitter is an organization.
- O. Date of signature.
- P. Print or type legal name of affiant.
- Q. The form must be notarized.

I certify that I am legally authorized to execute this Affidavit and to bind the Petitioner to the terms and conditions of this Affidavit.

I understand that intentionally submitting false information to the DEQ is a felony and may result in fines of up to \$25,000 for each violation.

I acknowledge that this Affidavit has been provided pursuant to Section 20129a of the NREPA.

(N) Signature of Petitioner or Person Legally Authorized to Bind Petitioner _____ (O) _____
Date

(P) Print or Type Legal Name

(Q) SUBSCRIBED AND SWORN to before me this _____ day of _____, _____, a Notary Public in and for _____ County, Michigan.

Notary Public

My Commission Expires: _____

I certify that I am legally authorized to execute this Affidavit and to bind the Submitter to the terms and conditions of this Affidavit.

I understand that intentionally submitting false information to the DEQ is a felony and may result in fines of up to \$25,000 for each violation.

I acknowledge that this Affidavit has been provided pursuant to Section 20126(1)(c) of the NREPA and Rule 909 of the rules promulgated thereunder.

Signature of Submitter or Person Legally Authorized to Bind Submitter

Date

Print or Type Legal Name

SUBSCRIBED AND SWORN to before me this _____ day of _____, _____, a
Notary Public in and for _____ County, Michigan.

Notary Public

My Commission Expires: _____

**INSTRUCTIONS FOR SUBMITTAL OF A PETITION FOR A BASELINE ENVIRONMENTAL
ASSESSMENT DETERMINATION
and Optional Determination of Compliance with Section 20107a
(FORM EQP4445(REV.3/99))**

(Under the authority of Part 201, 1994 Act 451, as amended, and the Rules promulgated thereunder)

Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, ("Part 201"), provides several exemptions from liability for environmental contamination including exemptions for a Baseline Environmental Assessment ("BEA"). Section 20129a allows a person to petition the Michigan Department of Environmental Quality ("DEQ") for a determination regarding the adequacy of a BEA. This is the form for submitting your BEA to the DEQ when petitioning for a determination of BEA adequacy under Section 20129a, and, when desired, a determination of compliance with Section 20107a.

1. Each petition for a BEA adequacy determination ("petition") submitted to the DEQ must be accompanied by the required materials referenced in the petition form to be considered administratively complete. The petition must include:

- A \$750 petition fee in the form of a check payable to the "State of Michigan".
- The petition form.
- An affidavit signed by the petitioner.
- An affidavit signed by the environmental professional who prepared the BEA.
- The BEA.
- A Notice Regarding Discarded or Abandoned Containers, if applicable.

If a determination under Section 20107a is being requested at this time, the petition must also include:

- A Section 20107a Compliance Analysis ("Section 7a CA").
- An affidavit signed by the environmental professional who prepared the Section 7a CA.

2. Directions or formats for each of these elements are attached.
3. Petitions which are not administratively complete will be returned to the petitioner without DEQ review and the \$750 fee will be refunded. No other refunds will be made.
4. Complete, bound copies of the petition form, BEA, and related materials should be submitted with separate sections for all submitted materials clearly marked with tabs or dividers. **Submit one copy of category N and D BEAs and two copies of Category S BEAs.**
5. A table of contents listing each section of the petition should immediately follow the petition form.
6. Each person (individual or other entity), except as provided under Rule 911(2), who is seeking a determination on a BEA must submit a separate petition form and fee with the BEA.
7. Any person who intentionally submits false or fraudulent information for the purpose of securing a BEA determination is guilty of a felony and will be subject to the penalties under Section 20139, including fines of up to \$25,000 per violation.
8. A unique petition number will be assigned to your petition by the DEQ. Your response from the DEQ will include this number. This number must be used on any correspondence regarding your petition.
9. Petitions should be sent directly to the DEQ office which serves the county where the property is located. A list of DEQ offices, their addresses, telephone numbers, and the counties served is found in Appendix A. Please label the outside of the petition envelope "Petition for BEA Determination" to allow us to process your review more quickly.
10. The sender is responsible for submitting materials using a method that provides proof of delivery if such proof is desired.



FOR DEQ USE ONLY	
Petition #:	_____
Check #:	_____
Amount \$:	_____
Payer:	_____
Index: 45021 PCA: 31400 OBJ: 9135	

**PETITION FOR BASELINE ENVIRONMENTAL ASSESSMENT DETERMINATION
and OPTIONAL DETERMINATION OF COMPLIANCE WITH SECTION 20107a
(FORM EQP4445(REV.3/99))**

(Under the authority of Part 201, 1994 Act 451, as amended, and the Rules promulgated thereunder)

All of the following questions must be answered. If any information is missing, the petition for Baseline Environmental Assessment (BEA) determination ("the petition") will be returned unreviewed.

Name and address of petitioner* (individual or legal entity): _____ _____ _____	Status relative to the property:			Address/location of property where BEA was conducted: _____ _____ _____
	Former	Current	Prospective	
	Owner* <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	Operator* <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

County _____

Provide the property tax identification number(s) or, if applicable, the ward and item numbers(s) for the property identified in the BEA. Required pursuant to Rule 907.

Contact person representing petitioner _____ Contact's Telephone # _____

If the address of the petitioner is different from the address that should be used to correspond with the petitioner's contact person, please provide the contact person's address: _____

Check the appropriate response to each of the following questions.

1. Is it known that the source of contamination at the property is primarily from any of the following?
- | | | |
|---|--------------------------|--------------------------|
| | YES | NO |
| • A leaking underground storage tank (UST) regulated under Part 213, 1994 PA 451, as amended. | <input type="checkbox"/> | <input type="checkbox"/> |
| • A licensed landfill or solid waste management facility. | <input type="checkbox"/> | <input type="checkbox"/> |
| • A licensed hazardous waste Treatment, Storage, or Disposal Facility. | <input type="checkbox"/> | <input type="checkbox"/> |
| • Oil and gas development related activities. | <input type="checkbox"/> | <input type="checkbox"/> |

The source of the release that resulted in this property becoming a "facility" will determine which DEQ division will review your petition.

2. Based on the Part 201 Rules, this BEA is a:
- | | |
|------------|--------------------------|
| Category N | <input type="checkbox"/> |
| Category D | <input type="checkbox"/> |
| Category S | <input type="checkbox"/> |

3. Are USTs or discarded or abandoned containers identified in the BEA? If yes, this information must be provided on Form EQP4476.
- | | |
|--------------------------|--------------------------|
| YES | NO |
| <input type="checkbox"/> | <input type="checkbox"/> |

ELIGIBILITY FOR BEA DETERMINATION

4. **Is the property for which the petition review is being requested a "facility" as defined in Section 20101?** If the answer to this question is no, the property is ineligible for consideration and your petition will be returned. YES NO
5. **Was the BEA conducted* prior to or within 45 days after the date of purchase*, occupancy, or foreclosure of the property, whichever is earliest and completed* not more than 15 days after the date required by Section 20126(1)(c) or Rule 299.5903(8)?** If the answer to either portion of this question is no, the BEA is invalid. YES NO
6. **Is this BEA petition being submitted to the DEQ within 6 months after the completion of the BEA?** If the answer to this question is no, pursuant to Section 20129a(1), the petition for a BEA determination is invalid and will be returned to the petitioner. YES NO

SECTION 20107a COMPLIANCE ANALYSIS

7. **Is the petitioner seeking or does the petitioner intend to seek a determination of compliance with Section 20107a obligations?** This determination must be specifically requested in order for the DEQ to provide its conclusions. A Section 20107a Compliance Analysis may be submitted according to the schedule prescribed in Rule 299.5915 and the Instructions for Preparing and Disclosing BEAs. YES NO
8. **If you answered yes to number 7 above, have you enclosed a Section 20107a Compliance Analysis now?** YES NO

REQUIRED MATERIALS

This petition must include the following documents prepared according to DEQ Instructions for Preparing and Disclosing BEAs. The documents should be assembled in the order they are listed. If any of this information is missing, the petition will be returned to you unreviewed. Please indicate whether or not the documents are enclosed.

- | | | |
|--|--------------------------|--------------------------|
| • The \$750.00 petition fee. | YES | NO |
| • This form, completed. | <input type="checkbox"/> | <input type="checkbox"/> |
| • The affidavit signed by the petitioner and prepared according to DEQ procedures. | <input type="checkbox"/> | <input type="checkbox"/> |
| • The affidavit signed by the environmental professional who prepared the BEA, and if applicable, the affidavit of the environmental professional who completed the Section 20107a Compliance Analysis. | <input type="checkbox"/> | <input type="checkbox"/> |
| • The BEA prepared according to DEQ Instructions | <input type="checkbox"/> | <input type="checkbox"/> |
| • A Notice Regarding Discarded or Abandoned Containers, if applicable. | <input type="checkbox"/> | <input type="checkbox"/> |
| • A Section 20107a Compliance Analysis, if you answered yes to question 8. | <input type="checkbox"/> | <input type="checkbox"/> |

With my signature below, I certify that this petition and all related materials are complete and accurate to the best of my knowledge and belief. I have read and understand the caution related to curing deficiencies found in the Instructions for Preparing and Disclosing BEAs. I understand that intentionally submitting false information in a petition is a felony and may result in fines of up to \$25,000 for each violation.

Signature of Submitter: _____ Date _____
(Person legally authorized to bind the petitioner*)

Name (Typed or Printed) _____

Title _____

**INSTRUCTIONS FOR FORM EQP4400(REV.3/99)
AFFIDAVIT IN SUPPORT OF A PETITION
FOR A BASELINE ENVIRONMENTAL ASSESSMENT DETERMINATION
AND OPTIONAL DETERMINATION OF COMPLIANCE WITH SECTION 20107a**

The lettered instructions below explain what information should be inserted in the corresponding blank shown on the Sample Affidavit.

- A. The state in which the affiant signs the affidavit.
- B. The county in which the affiant signs the affidavit.
- C. The name of affiant -- the individual (not the organization) who will be signing the affidavit.
- D. Identify the affiant's title in the organization. For example, *President of Land, Inc.*, *Director of Parks, City of Brownfield*, or *Owner of Growth Properties*. If the Petitioner is not an organization, affiant should state *an Individual*.
- E. Identify the name of the organization acquiring the interest in the property for which the determination is being sought. If an individual, identify *self*.
- F. The address of the Petitioner.
- G. Select and fill in as applicable: *purchased, intends to purchase, occupied, intends to occupy, foreclosed on, intends to foreclose on*.
- H. The address of the property for which the BEA was performed.
- I. The date on which the property transaction (purchase, occupancy, foreclosure) is expected to be or was completed.
- J. The date the BEA was conducted.
- K. The date the BEA was completed.
- L. Select and fill in as applicable: *purchase, occupancy, foreclosure*.
- M. Include item #8 if a Section 20107a determination is requested. A Section 7a Compliance Analysis must be submitted when such a determination is requested. State "Section 7a determination not requested", if appropriate.
- N. Include item #9 if a Section 20107a determination is requested, and as a part of the Section 7a Compliance Analysis, a Plan for Response Activity is required. State "Not proposed", if appropriate.
- O. Only include item #10 if the Petitioner is relying on engineering controls an isolation zone and/or stipulated conditions pursuant to Rule 909 and the Instructions for Preparing and Disclosing Baseline Environmental Assessments.
- P. Insert the appropriate stipulated conditions pursuant to Rule 909 and the Instructions for Preparing and Disclosing Baseline Environmental Assessments.
- Q. Signature of the individual, if the petitioner is an individual, or a person legally authorized to bind the petitioner, if the petitioner is an organization.
- R. Date of signature.
- S. Print or type legal name of affiant.
- T. The form must be notarized.



**AFFIDAVIT IN SUPPORT OF A PETITION FOR A BASELINE ENVIRONMENTAL
 ASSESSMENT DETERMINATION AND OPTIONAL DETERMINATION OF COMPLIANCE
 WITH SECTION 20107a (FORM EQP4400 (REV.3/99))**

(Under the authority of Part 201, 1994 Act 451, as amended, and the Rules promulgated thereunder)

STATE OF _____ **(A)** _____)
)
 COUNTY OF _____ **(B)** _____)

The purpose of this Affidavit is to set forth certain information and documentation to enable the Michigan Department of Environmental Quality (hereinafter the "DEQ") to make the determinations pursuant to Section 20129a of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act (hereinafter the "NREPA"), 1994 PA 451, as amended, MCL 324.29a. All terms found in this document which are defined in the NREPA, Part 3, Part 201, and the Part 201 Rules, shall have the same meaning as in the statute and the Part 201 Rules.

The undersigned Petitioner, being first duly sworn, deposes and says as follows:

1. **THIS AFFIDAVIT** is executed by the undersigned _____ **(C)** _____ whose title is, _____ **(D)** _____ on behalf of _____ **(E)** _____ (hereinafter "The Petitioner") located at _____ **(F)** _____.
2. The Petitioner _____ **(G)** _____ a property located at _____ **(H)** _____ (hereinafter the "Property") on _____ **(I)** _____.
3. The Property referred to in this petition is a "Facility."
4. The language in this Affidavit does not deviate from that in the model Affidavit, Form EQP4400 (Rev.3/99) [insert if appropriate: except as provided for in item #10].
5. The Baseline Environmental Assessment ("BEA") included in this petition was conducted on _____ **(J)** _____ and completed on _____ **(K)** _____. The BEA, to the best of the Petitioner's knowledge and belief, [insert if Item #10 is included in affidavit: except as specified in Item #10 of this affidavit,] reasonably defines the existing conditions and circumstances at the facility so that in the event of a release subsequent to the Petitioner's _____ **(L)** _____ of the Property, there is a means of distinguishing any new release from existing contamination.
6. The Petitioner agrees that the fee accompanying this petition will be deposited into the appropriate state fund, applies to this petition exclusively, and is not refundable, unless the Petition is found to be administratively incomplete and the Petition is not reviewed.
7. The Petitioner agrees that any affirmative determination on the Petition by the DEQ is based on:
 - a. The truthfulness and accuracy of the information submitted by the Petitioner.
 - b. The proposed use of the property set forth in the Petition.
 - c. The proposed hazardous substance(s) use set forth in the Petition.

- d. The Petitioner completing in a timely and satisfactory manner any response activity described in this Petition.
- e. The Petitioner having conducted the BEA prior to or within 45 days after the earlier of the date of purchase, occupancy, or foreclosure, and completing the BEA not more than 15 days after the date required by Section 20126(1)(c) or Rule 299.5903(8).

(M) [Include if a 7a determination is requested or state "Section 7a determination not requested"]

8. The Petitioner's proposed use of the facility will, to the best of the Petitioner's knowledge and belief, satisfy the requirements of Section 20107a of the NREPA.

(N) [Include if a Plan for Response Activity required or state "Not Proposed"]

9. The Petitioner agrees to undertake in a timely and satisfactory manner the response activities necessary to comply with Section 20107a of the NREPA.

(O) [Include if Petitioner is relying on engineering controls an isolation zone and/or stipulated conditions pursuant to Rule 909.]

10. **(P)** _____

I affirm that the above representations are true and are based upon my personal knowledge and belief after all reasonable inquiry.

I certify that I am legally authorized to execute this Affidavit and to bind the Petitioner to the terms and conditions of this Affidavit.

I understand that intentionally submitting false information to the DEQ is a felony and may result in fines of up to \$25,000 for each violation.

I acknowledge that this Affidavit has been provided pursuant to Section 20129a of the NREPA.

(Q) Signature of Petitioner or Person Legally Authorized to Bind Petitioner _____
(R) Date

(S) Print or Type Legal Name

(T) SUBSCRIBED AND SWORN to before me this _____ day of _____, _____, a Notary Public in and for _____ County, Michigan.

 Notary Public

My Commission Expires: _____

INSTRUCTIONS FOR FORM EQP4439(REV.3/99)
AFFIDAVIT OF ENVIRONMENTAL PROFESSIONAL IN SUPPORT OF A PETITION
FOR A BASELINE ENVIRONMENTAL ASSESSMENT DETERMINATION

The lettered instructions below explain what information should be inserted in the corresponding blank shown on the Sample Affidavit.

- A. The state in which the affiant signs the affidavit.
- B. The county in which the affiant signs the affidavit.
- C. The name of the affiant/environmental professional.
- D. Identify the affiant's position/title in the organization (for example, *Senior Geologist* or *Environmental Engineer*).
- E. The name of the affiant's employer (name of organization affiant works for, e.g., Consultants, Inc.). If affiant is employed directly by the Petitioner, provide Petitioner's name. If self-employed, indicate so.
- F. The address of the affiant's employer. (Use the Petitioner's address only if affiant is employed directly by the Petitioner.)
- G. Insert as applicable: *was retained by, is employed by*. (*Is employed by* should be used if the affiant is an in-house environmental professional for the Petitioner, employed directly by the Petitioner.)
- H. The name of the Petitioner.
- I. The address of the property for which the BEA was performed.
- J. The number of years the affiant has been an environmental professional.
- K. Attach a list of professional qualifications.
- L. Insert one response as applicable: *prepared, reviewed, overseen*.
- M. The date the BEA was conducted.
- N. The date the BEA was completed.
- O. Insert one response as applicable: *purchase, occupancy, foreclosure*.
- P. Signature of Environmental Professional.
- Q. Date of Environmental Professional signature.
- R. Print or type legal name of Environmental Professional.
- S. The form must be notarized.



**AFFIDAVIT OF ENVIRONMENTAL PROFESSIONAL IN SUPPORT OF A PETITION FOR A
 BASELINE ENVIRONMENTAL ASSESSMENT DETERMINATION
 (FORM EQP4439 (REV.3/99))**

(Under the authority of Part 201, 1994 Act 451, as amended, and the Rules promulgated thereunder)

STATE OF _____ **(A)** _____)
)
 COUNTY OF _____ **(B)** _____)

The purpose of this Affidavit is to set forth certain information and documentation to enable the Michigan Department of Environmental Quality (hereinafter the "DEQ") to make a determination on a petition for a Baseline Environmental Assessment ("BEA") Determination pursuant to Section 20129a of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act (hereinafter the "NREPA"), 1994 PA 451, as amended, MCL 324.20129a. All terms found in this document which are defined in the NREPA, Part 3, Part 201, and the Part 201 Rules, shall have the same meaning as in the statute and the Part 201 Rules.

The undersigned affiant, being first duly sworn, deposes and says as follows:

1. **THIS AFFIDAVIT** is executed by the undersigned _____ **(C)** _____, whose title is _____ **(D)** _____ working for _____ **(E)** _____ located at _____ **(F)** _____.
2. The affiant _____ **(G)** _____ **(H)** _____, (hereinafter the "Petitioner") to conduct a BEA on a property located at _____ **(I)** _____ (hereinafter the "Property").
3. I have **(J)** years of professional experience in the investigation and remediation of sites of environmental contamination. A copy of my qualifications, including education and work experience, is attached **(K)**.
4. The BEA for the Property was _____ **(L)** _____ by the affiant. It was conducted on _____ **(M)** _____ and completed on _____ **(N)** _____. To the best of the knowledge and belief of the affiant, and based upon the future hazardous substance use associated with the Petitioner's intended use of the property, [insert if Petitioner's Affidavit includes Item #10: with the exception of the stipulation in item #10 of the Petitioner's affidavit which reads: (insert stipulation in item #10 of Petitioner's Affidavit)] the BEA reasonably defines the existing conditions and circumstances at the facility so that in the event of a release subsequent to the Petitioner's _____ **(O)** _____ of the Property, there is a means of distinguishing the new release from existing contamination.
5. The language in this Affidavit does not deviate from that in the model Affidavit, Form EQP4439(Rev.3/99).

I affirm to the best of my knowledge and belief that the information contained in the BEA prepared for this Property is true and accurate and that all sample test results and other relevant

facility-related analytical data acquired, collected, and analyzed to prepare the BEA are included or referenced in the BEA.

I understand that intentionally submitting false information to the DEQ is a felony and may result in fines of up to \$25,000 for each violation.

I certify that I am fully authorized by the Petitioner I represent to execute this Affidavit.

(P)
Signature of Environmental Professional

(Q)
Date

(R)
Print or Type Legal Name

(S) SUBSCRIBED AND SWORN to before me this _____ day of _____, _____, a
Notary Public in and for _____ County, Michigan.

Notary Public

My Commission Expires: _____

SAMPLE

INSTRUCTIONS FOR FORM EQP4447(REV.3/99)
AFFIDAVIT OF ENVIRONMENTAL PROFESSIONAL IN SUPPORT OF A PETITION
FOR A DETERMINATION OF COMPLIANCE WITH SECTION 20107a

The lettered instructions below explain what information should be inserted in the corresponding blank shown on the Sample Affidavit.

- A. The state in which the affiant signs the affidavit.
- B. The county in which the affiant signs the affidavit.
- C. The name of the affiant/environmental professional.
- D. Identify the affiant's position/title in the organization (for example, *Senior Geologist* or *Environmental Engineer*).
- E. The name of the affiant's employer (name of organization affiant works for, e.g., Consultants, Inc.). If affiant is employed directly by the Petitioner, provide Petitioner's name. If self-employed, indicate so.
- F. The address of the affiant's employer. (Use the Petitioner's address only if affiant is employed directly by the Petitioner.)
- G. Insert as applicable: *was retained by*, *is employed by*. (*Is employed by* should be used if the affiant is an in-house environmental professional for the Petitioner, employed directly by the Petitioner.)
- H. The name of the Petitioner.
- I. The address of the property for which the BEA was performed.
- J. The number of years the affiant has been an environmental professional.
- K. Either attach a list of professional qualifications or list the qualifications below the statement.
- L. Insert one response as applicable: *prepared*, *reviewed*, *overseen*.
- M. The date the Section 20107a Compliance Analysis was completed.
- N. Signature of Environmental Professional.
- O. Date of Environmental Professional signature.
- P. Print or type legal name of Environmental Professional.
- Q. The form must be notarized.



MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
 ENVIRONMENTAL RESPONSE DIVISION

**AFFIDAVIT OF ENVIRONMENTAL PROFESSIONAL IN SUPPORT OF A PETITION FOR A
 DETERMINATION OF COMPLIANCE WITH SECTION 20107a (FORM EQP4447 (REV.3/99))**

(Under the authority of Part 201, 1994 Act 451, as amended, and the Rules promulgated thereunder)

STATE OF _____ **(A)** _____)
)
 COUNTY OF _____ **(B)** _____)

The purpose of this Affidavit is to set forth certain information and documentation to enable the Michigan Department of Environmental Quality (hereinafter the "DEQ") to make a determination on compliance with Section 20107a of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act (hereinafter the "NREPA"), 1994 PA 451, as amended, MCL 324.20107a, in conjunction with a Baseline Environmental Assessment ("BEA") Determination pursuant to Section 20129a of the NREPA, MCL 324.20129a. All terms found in this document which are defined in the NREPA, Part 3, Part 201, and the Part 201 Rules shall have the same meaning as in the statute and Part 201 Rules.

The undersigned affiant, being first duly sworn, deposes and says as follows:

1. **THIS AFFIDAVIT** is executed by the undersigned _____ **(C)** _____, whose title is _____ **(D)** _____ working for _____ **(E)** _____ located at _____ **(F)** _____.
2. The affiant _____ **(G)** _____ **(H)** _____, (hereinafter the "Petitioner") to conduct a BEA on a property located at _____ **(I)** _____ (hereinafter the "Property").
3. I have ___ **(J)** ___ years of professional experience in the investigation and remediation of sites of environmental contamination. A copy of my qualifications, including education and work experience, is attached **(K)**.
4. The Section 7a Compliance Analysis (hereinafter the "Section 7a CA") for the Property was _____ **(L)** _____ by the affiant and completed on _____ **(M)** _____. The Section 7a CA for the property will, when implemented, to the best of the affiant's knowledge and belief, satisfy the requirements of Section 20107a of the NREPA.
5. The language in this Affidavit does not deviate from that in the model Affidavit, Form EQP4447(Rev.3/99).

I affirm to the best of my knowledge and belief that the information contained in the Section 7a CA prepared for this Property is true and accurate.

I understand that intentionally submitting false information to the DEQ is a felony and may result in fines of up to \$25,000 for each violation.

I certify that I am fully authorized by the Petitioner I represent to execute this Affidavit.

(N)
Signature of Environmental Professional

(O)
Date

(P)
Print or Type Legal Name

(Q) SUBSCRIBED AND SWORN to before me this _____ day of _____, _____, a
Notary Public in and for _____ County, Michigan.

Notary Public

My Commission Expires: _____

SAMPLE



MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
 ENVIRONMENTAL RESPONSE DIVISION

**AFFIDAVIT OF ENVIRONMENTAL PROFESSIONAL IN SUPPORT OF A PETITION FOR A
 DETERMINATION OF COMPLIANCE WITH SECTION 20107a (FORM EQP4447 (REV.3/99))**

(Under the authority of Part 201, 1994 Act 451, as amended, and the Rules promulgated thereunder)

STATE OF _____)
)
 COUNTY OF _____)

The purpose of this Affidavit is to set forth certain information and documentation to enable the Michigan Department of Environmental Quality (hereinafter the "DEQ") to make a determination on compliance with Section 20107a of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act (hereinafter the "NREPA"), 1994 PA 451, as amended, MCL 324.20107a, in conjunction with a Baseline Environmental Assessment ("BEA") Determination pursuant to Section 20129a of the NREPA, MCL 324.20129a. All terms found in this document which are defined in the NREPA, Part 3, Part 201, and the Part 201 Rules shall have the same meaning as in the statute and Part 201 Rules.

The undersigned affiant, being first duly sworn, deposes and says as follows:

1. **THIS AFFIDAVIT** is executed by the undersigned _____, whose title is _____ working for _____ located at _____.
2. The affiant _____, (hereinafter the "Petitioner") to conduct a BEA on a property located at _____ (hereinafter the "Property").
3. I have _____ years of professional experience in the investigation and remediation of sites of environmental contamination. A copy of my qualifications, including education and work experience, is attached.
4. The Section 7a Compliance Analysis (hereinafter the "Section 7a CA") for the Property was _____ by the affiant and completed on _____. The Section 7a CA for the property will, when implemented, to the best of the affiant's knowledge and belief, satisfy the requirements of Section 20107a of the NREPA.
5. The language in this Affidavit does not deviate from that in the model Affidavit, Form EQP4447(Rev.3/99).

I affirm to the best of my knowledge and belief that the information contained in the Section 7a CA prepared for this Property is true and accurate.

I understand that intentionally submitting false information to the DEQ is a felony and may result in fines of up to \$25,000 for each violation.

I certify that I am fully authorized by the Petitioner I represent to execute this Affidavit.

Signature of Environmental Professional

Date

Print or Type Legal Name

SUBSCRIBED AND SWORN to before me this _____ day of _____, _____, a
Notary Public in and for _____ County, Michigan.

Notary Public
My Commission Expires: _____

**SUBMITTAL OF INFORMATION TO CURE DEFICIENCIES IN A BASELINE
ENVIRONMENTAL ASSESSMENT
Submitted Pursuant to Section 20129a**

Investigation, sampling, analysis, and related tasks for a BEA must be done within 45 days after purchase, occupancy, or foreclosure in order for them to be considered in the initial BEA Petition. Data or information collected after the 45 day window may be submitted to cure a deficiency in a BEA identified by the DEQ in response to a petition submitted pursuant to Section 29a **only in these limited circumstances:**

1. If it is necessary to collect additional samples to cure the identified deficiency, such samples will be accepted only if the owner or operator has not conducted business at the property which involves use, storage, handling, or management of significant quantities of hazardous substances. If additional samples are taken after the 45 day period has expired, an affidavit must be included with the resubmittal stating that the owner or operator had not conducted business activities at the property that involved the use of significant quantities of hazardous substances. The required model affidavit is Form EQP4402.
2. If additional samples are not required to cure the deficiency, then the use of hazardous substance(s) will not impair the opportunity to cure and no affidavit regarding this issue is required (the standard affidavits will still be required).

All resubmittals prepared to cure deficiencies in the initial BEA must be submitted to the DEQ within the 6 month period provided for in Section 29a. If the sample data is collected within the allowable timeframes described above and submitted within 6 months of completion of the initial BEA, the DEQ will review the revised BEA and other Petition documents and issue a determination regarding the revised BEA Petition if requested by the petitioner. The 6 month period allowed for submittal of any BEA and Section 7a CA is counted from the time an initial BEA is complete, not from the time additional data or information is prepared.

The following procedure must be followed when submitting a revised BEA and other Petition documents:

1. Information must be submitted to the DEQ district office which serves the property. Addresses are provided in Appendix A.
2. Information must be accompanied by a letter which describes the purpose of the submittal and summarizes how the BEA and/or other Petition documents have been revised. This letter **must include the Petition Number** assigned to the original BEA documents.

Persons submitting a revised BEA or other Petition documents are advised to use a method which provides proof of delivery. The DEQ will not prepare an acknowledgment of receipt of such materials.

**INSTRUCTIONS FOR FORM EQP4402(REV.3/99)
AFFIDAVIT IN SUPPORT OF MATERIALS TO CURE DEFICIENCIES
IN A BASELINE ENVIRONMENTAL ASSESSMENT**

The lettered instructions below explain what information should be inserted in the corresponding blank shown on the Sample Affidavit.

- A. The state in which the affiant signs the affidavit.
- B. The county in which the affiant signs the affidavit.
- C. The name of the affiant, the individual (not the organization) who will be signing the affidavit.
- D. Identify the affiant's title in the organization. For example, *President of Land, Inc., Director of Parks, City of Brownfield, or Owner of Growth Properties*. If the Petitioner is not an organization, affiant should state *an Individual*.
- E. Identify the name of the organization acquiring the interest in the property for which the determination is being sought. If an individual, identify *self*.
- F. The address of the Petitioner.
- G. Select and fill in as applicable: *purchased, occupied, foreclosed on*.
- H. The address of the property for which the BEA was performed.
- I. The date on which the property transaction (e.g., purchase, lease, foreclosure) was completed.
- J. Fill in the Petition number the DEQ assigned to the original petition. (It appears on the determination from DEQ.)
- K. The date the BEA was originally conducted.
- L. The date the BEA was originally completed.
- M. The date of the DEQ's determination finding your petition deficient.
- N. Name and address of environmental professional preparing the BEA supplement.
- O. The date the BEA supplement was completed.
- P. Signature of the individual, if the petitioner is an individual, or a person legally authorized to bind the petitioner, if the petitioner is an organization.
- Q. Date of signature.
- R. Print or type legal name of affiant.
- S. The form must be notarized.



**Michigan Department of Environmental Quality
Environmental Response Division**

**AFFIDAVIT IN SUPPORT OF MATERIALS TO CURE DEFICIENCIES IN
A BASELINE ENVIRONMENTAL ASSESSMENT (FORM EQP4402(REV.3/99))**
(Under the authority of Part 201, 1994 Act 451, as amended, and the Rules promulgated thereunder)

STATE OF _____ (A) _____)
)
 COUNTY OF _____ (B) _____)

The purpose of this Affidavit is to set forth certain information and documentation to enable the Michigan Department of Environmental Quality (hereinafter the "DEQ") to make a determination pursuant to Section 20129a of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act (hereinafter the "NREPA"), 1994 PA 451, as amended. All terms found in this document which are defined in the NREPA, Part 3, Part 201, and the Part 201 Rules, shall have the same meaning as in the statute and the Part 201 Rules.

The undersigned Petitioner, being first duly sworn, deposes and says as follows:

1. **THIS AFFIDAVIT** is executed by the undersigned _____ (C) _____, whose title is _____ (D) _____, on behalf of _____ (E) _____ (hereinafter "the Petitioner") located at _____ (F) _____.
2. The Petitioner _____ (G) _____ a property located at _____ (H) _____, (hereinafter "the Property") on _____ (I) _____.
3. The Property referred to in this petition is a "Facility."
4. The language in this Affidavit does not deviate from that in the model Affidavit, Form EQP4402 (Rev.3/99), reflecting the Part 201 Rules.
5. The original Baseline Environmental Assessment ("BEA"), submitted as part of Petition # _____ (J) _____ was conducted on _____ (K) _____ and completed on _____ (L) _____. The Petitioner made a good faith effort to submit an adequate BEA at that time. On _____ (M) _____, the DEQ determined the BEA to be deficient and notified the Petitioner of the deficiencies. A supplement to the original BEA which addresses the deficiencies, was completed by _____ (N) _____ on _____ (O) _____. With this additional information, the BEA, to the best of the Petitioner's knowledge and belief, and based upon the future hazardous substance use associated with the Petitioner's intended use of the property, reasonably defines the existing conditions and circumstances at the facility so that in the event of a release subsequent to the date the Petitioner _____ (G) _____ the Property, there is a means of distinguishing any new release from existing contamination.
6. The Petitioner certifies that at no time between, _____ (I) _____ (the date the Petitioner first _____ (G) _____ the property) and _____ (O) _____, (the date the supplement to the BEA was completed), were hazardous substances used, stored,

handled or managed on the property in quantities that constitute significant hazardous substance use.

7. The Petitioner agrees that any affirmative determination on the Petition by the DEQ is based on:
 - a. The truthfulness and accuracy of the information submitted by the Petitioner.
 - b. The proposed use of the property set forth in the Petition.
 - c. The proposed hazardous substance(s) use set forth in the Petition.
 - d. The Petitioner completing in a timely and satisfactory manner any response activity described in this Petition.
 - e. Hazardous substances not being present on the property in quantities that constitute significant hazardous substance use between the date the Petitioner first (G) the property and the date the supplement to the BEA was completed.

I affirm that the above representations are true and are based upon my personal knowledge and belief after all reasonable inquiry.

I certify that I am legally authorized to execute this Affidavit and to bind the Petitioner to the terms and conditions of this Affidavit.

I understand that intentionally submitting false information to the DEQ is a felony and may result in fines of up to \$25,000 for each violation.

I acknowledge that this Affidavit has been provided pursuant to Section 29a of the NREPA.

_____ **(P)** _____ **(Q)**
 Signature of Petitioner or Person Legally Authorized to Bind Petitioner Date

_____ **(R)** _____
 Print or Type Legal Name

(S) SUBSCRIBED AND SWORN to before me this _____ day of _____, _____, a Notary Public in and for _____ County, Michigan.

 Notary Public

My Commission Expires: _____



**AFFIDAVIT IN SUPPORT OF MATERIALS TO CURE DEFICIENCIES IN
 A BASELINE ENVIRONMENTAL ASSESSMENT (FORM EQP4402(REV.3/99))**
(Under the authority of Part 201, 1994 Act 451, as amended, and the Rules promulgated thereunder)

STATE OF _____)
)
 COUNTY OF _____)

The purpose of this Affidavit is to set forth certain information and documentation to enable the Michigan Department of Environmental Quality (hereinafter the "DEQ") to make a determination pursuant to Section 20129a of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act (hereinafter the "NREPA"), 1994 PA 451, as amended. All terms found in this document which are defined in the NREPA, Part 3, Part 201, and the Part 201 Rules, shall have the same meaning as in the statute and the Part 201 Rules.

The undersigned Petitioner, being first duly sworn, deposes and says as follows:

1. **THIS AFFIDAVIT** is executed by the undersigned _____, whose title is _____, on behalf of _____ (hereinafter "the Petitioner") located at _____.
2. The Petitioner _____ a property located at _____, (hereinafter "the Property") on _____.
3. The Property referred to in this petition is a "Facility."
4. The language in this Affidavit does not deviate from that in the model Affidavit, Form EQP4402 (Rev.3/99), reflecting the Part 201 Rules.
5. The original Baseline Environmental Assessment ("BEA"), submitted as part of Petition # _____ was conducted on _____ and completed on _____. The Petitioner made a good faith effort to submit an adequate BEA at that time. On _____, the DEQ determined the BEA to be deficient and notified the Petitioner of the deficiencies. A supplement to the original BEA which addresses the deficiencies, was completed by _____ on _____. With this additional information, the BEA, to the best of the Petitioner's knowledge and belief, and based upon the future hazardous substance use associated with the Petitioner's intended use of the property, reasonably defines the existing conditions and circumstances at the facility so that in the event of a release subsequent to the date the Petitioner _____ the Property, there is a means of distinguishing any new release from existing contamination.
6. The Petitioner certifies that at no time between, _____ (the date the Petitioner first _____ the property) and _____, (the date the supplement to the BEA was completed), were hazardous substances used, stored, handled, or managed on the property in quantities that constitute significant hazardous substance use

7. The Petitioner agrees that any affirmative determination on the Petition by the DEQ is based on:
 - a. The truthfulness and accuracy of the information submitted by the Petitioner.
 - b. The proposed use of the property set forth in the Petition.
 - c. The proposed hazardous substance(s) use set forth in the Petition.
 - d. The Petitioner completing in a timely and satisfactory manner any response activity described in this Petition.
 - e. Hazardous substances not being present on the property in quantities that constitute significant hazardous substance use between the date the Petitioner first _____ the property and the date the supplement to the BEA was completed.

I affirm that the above representations are true and are based upon my personal knowledge and belief after all reasonable inquiry.

I certify that I am legally authorized to execute this Affidavit and to bind the Petitioner to the terms and conditions of this Affidavit.

I understand that intentionally submitting false information to the DEQ is a felony and may result in fines of up to \$25,000 for each violation.

I acknowledge that this Affidavit has been provided pursuant to Section 29a of the NREPA.

Signature of Petitioner or Person Legally Authorized to Bind Petitioner

Date

Print or Type Legal Name

SUBSCRIBED AND SWORN to before me this _____ day of _____, _____, a Notary Public in and for _____ County, Michigan.

Notary Public

My Commission Expires: _____

INSTRUCTIONS FOR SUBMITTAL OF POST-BEA INFORMATION

The discussion in this section applies to environmental data and other information from any investigation conducted more than 45 days after purchase, occupancy or foreclosure. It also applies to additional information about changes in facility operations and/or hazardous substance use which is not submitted with the BEA. You can contact the DEQ office which serves your area for more information on making such submittals.

The DEQ will accept information, including additional facility characterization data, regarding a property for which a BEA has been conducted in compliance with Section 26(1)(c). This data and information will not be considered part of the BEA; however, it will be retained by the DEQ with the file for the facility. The DEQ will not provide a determination about, or otherwise respond to the adequacy of, post-BEA data for any purpose.

This procedure is intended to allow facility owners and operators to submit, for the DEQ's files, information which may be useful in determining the environmental condition of a facility at a point in time. Such information may be useful in determining whether an owner or operator is responsible for any activity causing a release. This procedure recognizes an important distinction between the scope of the liability exemption provided under Section 26(1)(c) and the factual proofs that may determine whether an owner or operator has been responsible for an activity causing a release under either Section 26(1)(a) or (b). In other words, if anyone who becomes an owner or operator after June 5, 1995, begins to use a hazardous substance in significant quantities that was not included in the BEA, whether that owner/operator is responsible for any activity causing a release will be evaluated based on the facts and information related to that activity. The opportunity to supplement the record by following this procedure will allow a more thorough review of the facts for this evaluation. An owner or operator who develops additional information about property conditions, hazardous substance use or facility operations may elect, but is not required by this procedure, to submit that information to the DEQ.

The following procedure must be used to submit post-BEA information:

1. Information must be submitted to the DEQ district office which serves the property. Addresses are provided in Appendix A.
2. Information must be accompanied by a letter which describes the purpose of the submittal. This letter **must include the BEA Disclosure Number or Petition Number** assigned to the original BEA documents.
3. Development of post-BEA information may be based on changes in hazardous substance use at the property. This type of post-BEA information must be accompanied by an **affidavit** from the facility owner or operator affirming that all post-BEA data intended to establish existing conditions with regard to the use of additional hazardous substance(s) was gathered **prior to any use of significant quantities of the additional hazardous substance(s) at the property**. The required model affidavit is form EQP4403.

Comparable submittals may be made to provide information to the DEQ for facilities where a BEA was not conducted. The person submitting post-BEA information or a comparable submittal should send the materials by a method that provides proof of delivery. The DEQ will not prepare acknowledgments of receipt of such submittals.

INSTRUCTIONS FOR FORM EQP4403(REV.3/99)
AFFIDAVIT IN SUPPORT OF POST-
BASELINE ENVIROMENTAL ASSESSMENT INFORMATION RELATED TO
NEW HAZARDOUS SUBSTANCE USE AT A FACILITY

The lettered instructions below explain what information should be inserted in the corresponding blank shown on the Sample Affidavit.

- A. The state in which the affiant signs the affidavit.
- B. The county in which the affiant signs the affidavit.
- C. The name of the affiant, the individual (not the organization) who will be signing the affidavit.
- D. Identify the affiant's title in the organization. For example, *President of Land, Inc., Director of Parks, City of Brownfield, or Owner of Growth Properties*. If the affiant is not an organization, affiant should state *an Individual*.
- E. Identify the name of the organization/individual submitting the information related to new hazardous substance use. Must be the same as the individual/organization named in the BEA.
- F. An abbreviated version of the name in item E may be used for the remainder of the affidavit.
- G. The address of the individual/organization identified in E.
- H. Select and fill in as applicable: *purchased, occupied, foreclosed on*.
- I. The address of the property for which the BEA was performed.
- J. The date on which the property transaction (e.g., purchase, lease, foreclosure) was completed.
- K. Fill in the Petition/BEA number the DEQ assigned to the original BEA. (If unknown, can be obtained from the Environmental Response Division office serving the county where the property is located).
- L. The date the BEA was originally completed.
- M. List the new hazardous substances intended to be used for which this affidavit is being provided.
- N. Name and address of the environmental professional preparing the report containing the additional information related to new hazardous substance use.
- O. The date the report providing the additional information related to new hazardous substance use was completed.
- P. Signature of the affiant, if an individual is making the submission, or a person legally authorized to bind the organization, if an organization is making the submission.
- Q. Date of signature.
- R. Print or type legal name of affiant.
- S. The form must be notarized.



**AFFIDAVIT IN SUPPORT OF POST-BASELINE ENVIRONMENTAL ASSESSMENT
 INFORMATION RELATED TO NEW HAZARDOUS SUBSTANCE USE AT A FACILITY
 (FORM EQP4403(REV.3/99))**

(Under the authority of Part 201, 1994 Act 451, as amended, and the Rules promulgated thereunder)

STATE OF _____ **(A)** _____)
)
 COUNTY OF _____ **(B)** _____)

The purpose of this Affidavit is to provide certain information and documentation to the Michigan Department of Environmental Quality (hereinafter the "DEQ"), regarding existing contamination at a property where a Baseline Environmental Assessment ("BEA") was previously submitted under the provisions of Section 20126(1)(c) of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act (hereinafter the "NREPA"), 1994 PA 451, as amended. Hazardous substances in addition to those identified in the original BEA are now intended to be used at the property. All terms found in this document, which are defined in the NREPA, Part 3, Part 201, and the Part 201 Rules, shall have the same meaning as in the statute and the Part 201 Rules.

The undersigned affiant, being first duly sworn, deposes and says as follows:

1. **THIS AFFIDAVIT** is executed by the undersigned _____ **(C)** _____, whose title is _____ **(D)** _____, on behalf of _____ **(E)** _____ (hereinafter " _____ **(F)** _____") located at _____ **(G)** _____.
2. A property located at _____ **(I)** _____, (hereinafter "the Property"), was _____ **(H)** _____, by _____ **(F)** _____ on _____ **(J)** _____.
3. The Property referred to in this petition is a "Facility."
4. The language in this Affidavit does not deviate from that in the model Affidavit, Form EQP4403 (Rev.3/99), reflecting the Part 201 Rules.
5. The original BEA, _____ **(K)** _____, was completed on _____ **(L)** _____. At that time _____ **(F)** _____ made a good faith effort to submit an adequate BEA.
6. _____ **(F)** _____ now intends to change or broaden its use, storage, handling, or management of hazardous substance(s) in significant quantities at the property to include _____ **(M)** _____.
 This/these hazardous substance(s) were not identified in the original BEA as hazardous substances intended to be used at the property. Additional information was obtained related to the conditions at the property and is provided in a report(s) completed by _____ **(N)** _____ on _____ **(O)** _____.

7. _____ **(F)** _____ certifies that at no time between, _____ **(J)** _____ (the date _____ **(F)** _____ first _____ **(H)** _____ the property) and _____ **(O)** _____, (the date the additional information obtained), was/were the hazardous substances(s) identified in item 6 above, used, stored, handled, or managed on the property in quantities that constitute significant hazardous substance use.
8. _____ **(F)** _____ acknowledges that the DEQ will add this information to the file for this property but that the DEQ will not make a determination about the adequacy of this information for any purpose in response to this submittal. _____ **(F)** _____ understands that this information is not a part of the BEA and does not have any bearing on the adequacy of the original BEA.

I affirm that the above representations are true and are based upon my personal knowledge and belief after all reasonable inquiry.

I understand that intentionally submitting false information to the DEQ is a felony and may result in fines of up to \$25,000 for each violation.

I certify that I am legally authorized to execute this Affidavit and to bind _____ **(F)** _____ to the terms and conditions of this Affidavit.

(P)
 Signature of Individual or Person Legally Authorized to Bind Submitter
 of original BEA

(Q)
 Date

(R)
 Print or Type Legal Name

(S) SUBSCRIBED AND SWORN to before me this _____ day of _____, _____, a Notary Public in and for _____ County, Michigan.

 Notary Public

My Commission Expires: _____

7. _____ certifies that at no time between, _____ (the date _____ first _____ the property) and _____, (the date the additional information obtained), was/were the hazardous substances(s) identified in item 6 above, used, stored, handled, or managed on the property in quantities that constitute significant hazardous substance use.

8. _____ acknowledges that the DEQ will add this information to the file for this property but that the DEQ will not make a determination about the adequacy of this information for any purpose in response to this submittal.

_____ understands that this information is not a part of the BEA and does not have any bearing on the adequacy of the original BEA.

I affirm that the above representations are true and are based upon my personal knowledge and belief after all reasonable inquiry.

I understand that intentionally submitting false information to the DEQ is a felony and may result in fines of up to \$25,000 for each violation.

I certify that I am legally authorized to execute this Affidavit and to bind _____ to the terms and conditions of this Affidavit.

Signature of Individual or Person Legally Authorized to Bind Submitter
of original BEA

Date

Print or Type Legal Name

SUBSCRIBED AND SWORN to before me this _____ day of _____, _____, a Notary Public in and for _____ County, Michigan.

Notary Public

My Commission Expires: _____

GLOSSARY

The following words and phrases are used in this Instruction document, and on the forms and affidavits that are required for BEA submittals.

"Baseline Environmental Assessment" or "BEA" is a defined term under Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, (NREPA) 1994 PA 451, as amended. Section 1(1)(d) defines a BEA as "an evaluation of environmental conditions which exist at a facility at the time of purchase, occupancy, or foreclosure that reasonably defines the existing conditions and circumstances at the facility, so that, in the event of a subsequent release, there is a means of distinguishing the new release from existing contamination."

"Conducted" is defined in Rule 901(g) and, when used in reference to the date that a BEA is conducted, means the date when all site history research, field work, laboratory analysis, data interpretation are complete, and preparation of the BEA report is substantially complete.

"Completed" or "Date of Completion" means, when used in reference to the date that a BEA is completed, the date when the BEA report is finalized by the submitter for initial disclosure to the DEQ. The date of completion may not be more than 15 days after the date required by Section 26(1)(c) or Rule 903(8). "Date of Completion" is defined in Rule 901(h).

"Date of Occupancy" is defined in Rule 901(i) and means the time when a person first becomes the operator of the property, except for the provisions of Rule 903(8) which apply to a permittee for subsurface oil, gas, storage, or mineral rights under Part 615 or Part 625 of the NREPA. No presence on the property is required for a person to have occupancy of the property for the purpose of the BEA process. "Occupancy" is to "operator" as "purchase" is to "owner."

"Environmental Professional" is the term used in Section 29a to refer to the person who prepares a BEA. There are no minimum qualifications for a person to be an environmental professional for the purpose of preparing a BEA, or submitting the affidavit required of an environmental professional when a person is seeking a determination from the DEQ pursuant to Section 29a. The information provided in the affidavit about the environmental professional's background and experience will be used by the DEQ to determine the expertise of the environmental professional and focus staff review of the BEA appropriately. BEAs for Michigan facilities may be prepared by out-of-state environmental professionals.

"Facility" means any area, place, or property where a hazardous substance in excess of the concentrations which satisfy the requirements of Sections 20a(1)(a) or (17) or the cleanup criteria for unrestricted residential use under Part 213 has been released, deposited, disposed of, or otherwise comes to be located. Facility does not include any area, place, or property at which response activities have been completed which satisfy the cleanup criteria for the residential category provided for in Sections 20a(1)(a) and (17) or at which corrective action has been completed under Part 213 which satisfies the cleanup criteria for unrestricted residential use.

"Operator" is a defined term under Part 201 and means a person who is in control or responsible for the operation of a facility. Operator **does not** include a person who is holding a security interest in the facility provided the person does not participate in the management of the facility. Operator also **does not** include a person who is acting as a fiduciary. Further information about the terms operator and fiduciary can be found in Sections 1(1)(y), 1a and 1b of Part 201.

"Owner" is a defined term under Part 201 and means a person who owns a facility. Excluded from the definition of an owner is a person who holds a security interest, including a land contract vendor, unless that person participates in the management of a facility. Also excluded is a person who is acting as a fiduciary. Further information about the terms owner and fiduciary can be found in Sections 1(1)(z), 1a, and 1b of Part 201.

"Person" is defined in Part 3 of the NREPA and means "an individual, partnership, corporation, association, governmental entity, or other legal entity".

"Petitioner" is defined in Rule 901(m) and is the term used to identify the person who is seeking liability protection for existing contamination at a facility by submitting the BEA for a determination by the DEQ. The person named on Form EQP4445 and in the affidavit as the petitioner is the person who will be covered by the liability protection that is afforded by an adequate BEA. The petitioner may be an individual, a corporation, a local unit of government, or other entity defined as a "person" in the NREPA. The petitioner should not be identified as the individual who signs Form EQP4445 and the affidavit(s) on behalf of the petitioner, unless the petitioner is that individual. Each person (individual or other entity) who is seeking a determination on a BEA must submit a separate petition and fee with the BEA. An exception to this requirement will be made for joint owners of property as tenants in common, joint tenants, or tenants in entirety, as long as the individuals will be conducting the same activities on the property. In this case, only one petition and petition fee will be necessary.

"Purchase" refers to, for the purposes of these Instructions, property purchase (in fee or by land contract) or the acquisition of ownership interest by any other means including gift, property transfer, inheritance, devise or transfer from an inter vivos or testamentary trust, of property that is the subject of the BEA. A defense to liability under Section 26(3)(g) may apply to some of these transactions.

"Submitter" is defined in Rule 901(q) and means a person who is seeking liability protection by conducting and disclosing a BEA either through a petition under Section 29a or through a disclosure under Section 26(1)(c)(ii) of Part 201.

Appendix A

Appendix B

Appendix C

Appendix D

Appendix E

Appendix F

