

Environmental Cleanup Laws Changing

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The Michigan Legislature has just passed a package of amendments to Part 201 of the Natural Resources and Environmental Protection Act--Michigan's primary environmental cleanup law. The amendments cover a broad range of issues and include measures designed to help keep Michigan in the forefront of redeveloping brownfield properties and giving them useful second lives. The legislation is expected to be signed into law by Gov. Jennifer Granholm before the end of the year and will take immediate effect.

The amendments are the end result of lengthy deliberations among regulatory agencies, the environmental advocacy community and business and industry. Troy Cumings of Warner Norcross & Judd was heavily involved in crafting and negotiating the amendments and in lobbying the Legislature for their passage. The amendments do not make any radical changes in Michigan law, but they do introduce several new requirements and clarifications that will affect the purchase, redevelopment and cleanup of industrial and commercial real property in Michigan.

The reforms include:

- The Baseline Environmental Assessment (BEA) process will continue to permit purchasers and lessees of contaminated property to avoid cleanup liability for pre-existing contamination. BEAs will now be more closely aligned with federal statutes, including the federal standard for "all appropriate inquiry" (AAI). In addition to conducting an AAI-compliant Phase I environmental site assessment, a purchaser or tenant will be required to conduct sufficient testing to confirm the property is a "facility." The BEA will no longer need to distinguish existing contamination from new contamination.
- The Michigan Department of Natural Resources and Environment (MDNRE) will no longer review BEAs for adequacy.
- An existing liability exemption for lessees of retail, office or commercial property is being amended to clarify that the exemption is not dependent on the level of the lessee's use of hazardous substances.
- A newly created No Further Action (NFA) process will enable persons cleaning up a property to obtain confirmation from the MDNRE that a cleanup is complete. The "NFA report must be prepared by an environmental consultant meeting certain minimum professional qualifications and carrying specified insurance coverage. The MDNRE must act on a NFA report within 150 days.
- A newly created Response Activity Review Panel appointed by the MDNRE Director and empowered to hear appeals of MDNRE decisions on technical and scientific issues. An appeal to the Panel will cost \$3,500.
- Due care obligations of an owner or operator of contaminated property will now include obligations imposed under federal law, including providing reasonable cooperation, assistance and access to persons conducting cleanup activity, and compliance with land use restrictions.

- Modified and expanded rules pertaining to the venting of groundwater.

A more detailed synopsis of the changes, prepared by Warner Norcross & Judd attorney Scott Watson, is available [here](#).

Please contact Scott Hubbard (616.752.2157 or shubbard@wnj.com) or any other member of the Warner Norcross & Judd Environmental Group if you would like more information regarding the changes and how they will affect any pending or future projects.