

Frequently Asked Questions  
about the

Brownfield Redevelopment Financing  
Act  
1996 PA 381, as amended

and

Department of Environmental Quality  
Involvement

# FREQUENTLY ASKED QUESTIONS

about the

## **Brownfield Redevelopment Financing Act 1996 PA 381, as amended**

and

## **Department of Environmental Quality Involvement**



[www.michigan.gov/deq](http://www.michigan.gov/deq)  
Jennifer M. Granholm, Governor  
Steven E. Chester, Director  
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*For additional information, please refer to the Act 381 Work Plan Instructions available on the DEQ website at [www.michigan.gov/brownfieldauthority](http://www.michigan.gov/brownfieldauthority).*

## CONTACTS

1. **QUESTION:** Who is the primary contact for information regarding establishment of a Brownfield Redevelopment Authority (Authority) and preparation of a brownfield plan?

**ANSWER:** General Contact: Department of Environmental Quality (DEQ)  
Remediation and Redevelopment Division (RRD)  
Ron Smedley, 517-373-4805, [smedleyr@michigan.gov](mailto:smedleyr@michigan.gov)  
or  
Darlene Van Dale, 989-705-3453, [vandaled@michigan.gov](mailto:vandaled@michigan.gov)  
and  
Michigan Economic Development Corporation (MEDC)  
Peter Anastor, 517-373-9014, [anastorp1@michigan.org](mailto:anastorp1@michigan.org)

2. **QUESTION:** Who is the primary contact for interpretation of eligible activities for conducting baseline environmental assessments, due care activities, or additional response activities and information regarding preparation and submission of work plans for DEQ review?

**ANSWER:** General Contact: Darlene Van Dale, 989-705-3453, [vandaled@michigan.gov](mailto:vandaled@michigan.gov)  
Site Specific Contact: Appropriate Division staff in the district office serving your county  
(see DEQ/RRD Office Locations map at [www.michigan.gov/brownfieldauthority](http://www.michigan.gov/brownfieldauthority))

3. **QUESTION:** Who is the primary contact for interpretation of eligible activities that must be approved by the Michigan Economic Growth Authority (MEGA) and which include site preparation, demolition, infrastructure improvements that directly benefit the eligible property, lead or asbestos abatement, and relocation of public buildings or operations for economic development?

**ANSWER:** The Michigan Economic Development Corporation (MEDC) is administering the program for MEGA. General Contact: Peter Anastor, 517-373-9014, [anastorp1@michigan.org](mailto:anastorp1@michigan.org)

4. **QUESTION:** Who is the primary contact regarding tax increment financing under the Brownfield Redevelopment Financing Act, 1996 PA 381, as amended (Act 381)?

**ANSWER:** General Contact: Department of Treasury  
Dianne Wright, 517-373-2408, [wrightd3@michigan.gov](mailto:wrightd3@michigan.gov)

5. **QUESTION:** Who is the primary contact with regard to the Obsolete Property Rehabilitation Act, 2000 PA 146?

**ANSWER:** General Contact: Department of Treasury  
Dianne Wright, 517-373-2408, [wrightd3@michigan.gov](mailto:wrightd3@michigan.gov)

6. **QUESTION:** Who is the primary contact with regard to the Single Business Tax Act, 1975 PA 228, as amended, which provides for tax credits for investments made at eligible properties within a brownfield plan area?

**ANSWER:** General Contact: Michigan Economic Development Corporation  
Peter Anastor, 517-373-9014, [anastorp1@michigan.org](mailto:anastorp1@michigan.org)

## BROWNFIELD PLAN

7. **QUESTION:** What is DEQ's role and obligation with regard to brownfield plans?

**ANSWER:** The DEQ's role is limited to conducting Act 381 work plan reviews where school taxes are to be captured. Staff will ensure that the proposed work plan activities and costs are consistent with the approved brownfield plan. If the brownfield plan is found to be missing elements required by Section 13(1) of Act 381 or contain inaccurate representations, staff will bring such observations to the attention of the BRA. Missing information will be requested as part of the work plan review process.

8. **QUESTION:** How does Act 381 tax increment financing work?

**ANSWER:** Cleanup and redevelopment of a brownfield property will increase the value of the property, and therefore, the property tax revenues from the property. The increase in tax revenue over a base year, the year the property is included in the brownfield plan, is the tax increment. The increased tax revenues are known as captured taxes. These captured taxes can then be used to pay the expenses for eligible environmental response and redevelopment activities. Tax increment revenues eligible for capture are all property taxes including taxes levied for school operating purposes (with approval from the DEQ or MEGA). Taxes already captured as part of an existing tax increment financing plan (under other state laws) and taxes levied to pay off specific obligations are exempt.

9. **QUESTION:** What taxes are school taxes?

**ANSWER:** Under Act 381 the local school operating tax and state education tax are considered school taxes. The intermediate school district tax is not a school tax under Act 381.

10. **QUESTION:** Can incremental school debt taxes be captured?

**ANSWER:** No. See the definition of "tax increment revenues" in Section 2 (aa) of Act 381.

## ELIGIBLE PROPERTY

11. **QUESTION:** What is an eligible property?

**ANSWER:** Eligible property is defined as property for which eligible activities are identified under a brownfield plan that was used or is currently used for commercial, industrial, or residential purposes that is either in a qualified local governmental unit and is a facility, functionally obsolete, or blighted, or is not in a qualified local governmental unit and is a facility, and includes parcels that are adjacent or contiguous to that property if the development of the adjacent and contiguous parcels is estimated to increase the captured taxable value of that property. Eligible property includes, to the extent included in the brownfield plan, personal property located on the property. Eligible property does not include qualified agricultural property exempt under Section 7ee of the General Property Tax Act, 1893 PA 206, MCL 211.7ee, from the tax levied by a local school district for school operating purposes to the extent provided under Section 1211 of the revised school code, 1976 PA 451, MCL 380.1211.

For the DEQ, an eligible property under Act 381 is a facility as defined by Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), and includes parcels that are adjacent or contiguous to that property if the development of the adjacent or contiguous parcels is estimated to increase the captured taxable value of that property.

12. **QUESTION:** Must the property at which a BRA proposes to conduct activities be a facility prior to submission of the work plan to the DEQ?

**ANSWER:** Yes. However, parcels adjacent or contiguous to the facility property never have to be a facility for eligible activities to be conducted on them if the development of those parcels is estimated to increase the captured taxable value of the facility property.

### WORK PLAN PROCESSING

13. **QUESTION:** Where should a BRA submit a work plan or remedial action plan for conducting response activities pursuant to Act 381?

**ANSWER:** Generally, this will be the DEQ's Remediation and Redevelopment Division (RRD). The work plan and approved brownfield plan should be sent to the District Supervisor in the division having routine programmatic responsibility for the facility. In addition, a copy should be sent to Darlene Van Dale, Act 381 Coordinator, in the Gaylord Field Office. See DEQ/RRD Office Locations map at [www.michigan.gov/brownfieldauthority](http://www.michigan.gov/brownfieldauthority).

The work plan must be submitted to the DEQ by the BRA. If the property owner, developer, consultant, etc. submits the work plan, it will be returned.

14. **QUESTION:** What if the eligible property has eligible activities requiring both DEQ and MEGA approval?

**ANSWER:** Preparation of one work plan is recommended; however, the proposed activities and associated costs should be separated within the work plan so that both agencies know which activities and costs they are being requested to review. The brownfield plan should include separate tax increment financing tables identifying tax capture for the DEQ costs and for the MEGA costs. Submit the work plan and approved brownfield plan to the appropriate DEQ division and to the MEDC.

15. **QUESTION:** How will the DEQ process requests for Act 381 work plan approval?

**ANSWER:** Appropriate district staff and the Act 381 coordinator will review the work plan for administrative completeness, determination of whether the proposed activities are response activities and eligible activities, and for technical adequacy. The DEQ staff must determine the following:

- a. Whether the individual activities included in the work plan or remedial action plan are sufficient to complete the eligible activity.
- b. Whether the individual activities included in the work plan or remedial action plan are required to complete the eligible activity.
- c. Whether the cost for each individual activity is reasonable.

The DEQ staff must prepare a written response indicating one of the following determinations:

- a. An unconditional approval.
- b. A conditional approval that delineates specific necessary modifications to the work plan or remedial action plan, including, but not limited to, individual activities to be added or deleted from the work plan or remedial action plan and revision of costs.
- c. If the work plan or remedial action plan lacks sufficient information to respond under a. or b., a specific letter stating the necessary additions or changes to the work plan or remedial action plan to be submitted before a plan will be considered by the DEQ.

Response letters will be issued under signature of the RRD District Supervisor.

16. **QUESTION:** How are reasonable costs determined?

**ANSWER:** By comparison with similar activities at private, state-funded, and/or other brownfield redevelopment sites in the district or state.

If costs for certain activities are determined to be unreasonable, the BRA may be requested to provide additional information, itemize costs further, and/or seek bids on those activities.

17. **QUESTION:** What if the eligible activity costs in the work plan exceed the total costs approved in the brownfield plan?

**ANSWER:** Proposed activities and costs in the work plan must be consistent with the approved brownfield plan. The DEQ cannot approve work plan costs that exceed the brownfield plan costs approved by the BRA and local unit of government. An amended brownfield plan would be necessary.

18. **QUESTION:** How long will it take to complete the work plan review?

**ANSWER:** For review of work plans for conducting Baseline Environmental Assessments (BEAs) and/or due care analyses, Act 381 specifies a review and response period of sixty (60) days or less. The statute does not specify a review period for work plans for additional response activities. Under Part 201 of the NREPA, work plans must be reviewed within six (6) months. Therefore, the review period will not exceed six (6) months and will often be within sixty (60) days.

The official receipt date is the date the work plan is received in the DEQ district office.

19. **QUESTION:** Does the review period start over if additional information is needed from the BRA to make a determination on the work plan?

**ANSWER:** Yes, upon receipt of the additional information. However, in most cases a response will be provided in less time than that indicated in answer number 18 above.

20. **QUESTION:** Does DEQ approval of an Act 381 work plan for BEA or due care activities provide a guarantee that the agency will find the resultant BEA or due care plan adequate in the event a petition is received for a determination in the future?

**ANSWER:** No. However, the DEQ's approval of the plan does indicate the proposed course of action to develop a BEA or meet due care obligations is generally appropriate and, based on available information, is likely to be sufficient. The manner in which the activities are implemented, new site-specific findings, evolution of redevelopment plans, etc., will impact the ultimate adequacy of the BEA and due care activities.

21. **QUESTION:** Is a work plan required for additional response activities?

**ANSWER:** If a BRA wishes to capture school taxes, a work plan must be submitted to the DEQ and be approved prior to the additional response activities being undertaken. If no school tax capture is

desired, the DEQ approval of a work plan for additional response activities is not required under Act 381.

22. **QUESTION:** Is DEQ approval necessary to use funds from the Local Site Remediation Revolving Fund (LSRRF)?

**ANSWER:** Yes, if school taxes placed in the LSRRF will be used to fund the eligible activities.

23. **QUESTION:** Is DEQ approval necessary for the interest costs of financing the eligible activities?

**ANSWER:** Yes, if school taxes will be used to reimburse the interest costs.

### PRIOR APPROVAL

24. **QUESTION:** Are the costs of activities included in a work plan submitted to the DEQ for approval pursuant to Act 381, but started prior to submission of the work plan or receipt of a reply by the agency, eligible for payment from captured school taxes?

**ANSWER:** No, eligible costs are for those activities "to be conducted" consistent with a work plan approved by the DEQ. The cost of any activity started prior to the DEQ approval of a work plan is not eligible. The DEQ cannot provide "retroactive" approvals. The only exception is for work plan preparation costs.

25. **QUESTION:** What if the actual costs of the eligible activities will exceed the approved work plan costs?

**ANSWER:** If the actual costs will exceed the approved work plan costs (including the 15 percent contingency, if appropriate), approval from the DEQ is necessary before the work is conducted and approved costs are exceeded.

### ELIGIBLE ACTIVITIES

26. **QUESTION:** What activities are eligible and potentially approvable components of a DEQ Act 381 work plan?

**ANSWER:** As defined, "eligible activities" or "eligible activity" does not include activities related to multisource commercial hazardous waste disposal wells as that term is defined in Section 62506a, of the NREPA, but means one or more of the following:

- a. Baseline environmental assessment activities.
- b. Due care activities.
- c. Additional response activities.

Some examples of eligible environmental response activities include:

#### For BEAs

- Environmental assessments subsequent to determining the property is a facility.
- Sampling and analysis.

- Data interpretation and reporting.
- Development and installation of engineering controls or isolation zones.
- Disclosure of BEA.
- Petitioning for DEQ determination.

For Compliance with Due Care (7a) Obligations

- Investigation (sampling, analysis, interpretation, reporting) to define contamination.
- Assessment of intended use with regard to contamination on site to identify 7a issues.
- Development of a plan for response activities to meet 7a obligations.
- Contaminant treatment or removal to prevent unacceptable exposure or exacerbation.
- Barriers to prevent exposure, exacerbation, or third party impacts.

Additional Response Activities - The DEQ will consider the level of risk reduction that will be accomplished relative to the cost of the activity in determining whether to approve or deny these activities. For example, a proposal to clean up an industrially-zoned property to generic residential criteria using taxes levied for school operating purposes may be denied.

- Evaluation.
- Interim response activity.
- Remedial action.
- Demolition that is a response activity.
- Lead or asbestos abatement that is a response activity.
- Taking of other actions necessary to protect the public health, safety, welfare, environment, or natural resources.

27. **QUESTION:** How will the DEQ determine the eligibility of proposed additional response activities submitted for approval pursuant to Act 381?

**ANSWER:** In making that determination the DEQ will consider the following:

- Whether the individual activities included in the work plan or remedial action plan are sufficient to complete the eligible activity.
- Whether each individual activity included in the work plan or remedial action plan is required to complete the eligible activity.
- Whether the cost for each individual activity is reasonable.
- The level of risk reduction that will be accomplished by the additional response activities.

Per Section 15(10) of Act 381 the DEQ has the authority to disapprove funding from school tax capture for all additional response activities, and if disapproved, that action is final.

28. **QUESTION:** Will the DEQ approve the capture of school taxes to achieve a generic closure under Part 201 of the NREPA?

**ANSWER:** Generally not, unless equal in cost to other appropriate due care options. At the discretion of the BRA and the governing body, local taxes can be used to achieve such closures.

29. **QUESTION:** How much detail is needed regarding the proposed activities to be conducted?

**ANSWER:** Adequate detail should be provided to demonstrate why each individual activity is sufficient and required to complete the eligible activity and to allow DEQ staff the ability to determine



whether the cost associated with each activity is reasonable. If the necessity of an activity is unknown, do not include it in the work plan.

30. **QUESTION:** Can the work plan budget contain a line item for contingencies?

**ANSWER:** Yes. The DEQ may approve up to 15 percent of the approved activity costs for contingencies. Contingency funding cannot be used for activities in the work plan that are not approved.

31. **QUESTION:** What if the project has received other state and/or federal grants such as Site Reclamation, Brownfield Redevelopment, or Waterfront Redevelopment?

**ANSWER:** Local or school taxes cannot be captured for any eligible activities that are being funded by a grant. School taxes can be captured to pay back a loan such as a Revitalization Loan provided this would not benefit a liable party and the activities have not been conducted.

32. **QUESTION:** Is the excavation and off-site disposal of contaminated soil or fill material an eligible activity?

**ANSWER:** Yes, if the contaminant levels exceed criteria that would adequately protect public health for the intended development; if it is demonstrated through the submission of a competent engineering analysis that the fill material is unable to provide adequate structural support; or if it is demonstrated the contaminated soil or fill material cannot physically be accommodated on site by use of tools available under Part 201 of the NREPA. Building relocation and alternate construction methods should also be evaluated to determine the most cost-effective method for dealing with the contamination. If excavation is necessary as part of the construction project (i.e. a basement is being constructed), school tax capture can only be approved for the additional costs due to the presence of contamination (i.e. the cost of excavating the basement would be ineligible but the increase in off-site disposal costs due to the contamination would be eligible). This may include additional handling, disposal, and backfill costs.

33. **QUESTION:** Is the excavation and off-site disposal of uncontaminated waste fill material (i.e. brick, concrete, wood, metal, glass, etc.) an eligible activity?

**ANSWER:** Yes, if the fill material is waste, not soil, and it is demonstrated through the submission of a competent engineering analysis that the waste fill material is unable to provide adequate structural support for the building. Building relocation and alternate construction methods should also be evaluated to determine the most cost-effective method for dealing with the waste fill material. See Number 32 above with regard to limitations on excavation and disposal.

34. **QUESTION:** Is the removal and off-site disposal of surface debris/solid waste or physical hazards an eligible activity?

**ANSWER:** Generally not, except demolition of buildings when qualified as a response activity, as contaminated wastes, or for structural support issues.

35. **QUESTION:** Is protection of surface water an eligible activity?

**ANSWER:** Generally, protecting surface water from existing contamination would be an "additional response activity". In some instances surface water protection activities may be required under due care to prevent exacerbation.

36. **QUESTION:** Is the cost to place cover (a barrier) over contamination an eligible activity?

**ANSWER:** It depends. The DEQ will generally approve the cost of four inches of topsoil, grass seed, and mulch in low activity (landscaped) areas of the property where contaminant concentrations exceed the human direct contact criteria. The DEQ will allow for more cover in active areas such as playgrounds, high foot-traffic, etc. The amount approved will be site-specific depending on the proposed development. The DEQ will not approve the cost of roads, parking lots, basement floors, etc., as necessary human direct contact barriers.

37. **QUESTION:** Are administrative and operating expenses of the BRA or the municipality on behalf of the BRA considered eligible activities?

**ANSWER:** Yes, but only from local **non-school** taxes and not to exceed \$75,000 per BRA per fiscal year (See Section 13(16) of Act 381.) Therefore, these types of costs, including BRA oversight costs or attorney fees, should not be included in a work plan submitted to the DEQ.

38. **QUESTION:** Are meetings and negotiations costs of the BRA's environmental consultant considered eligible activities?

**ANSWER:** Yes, if necessary and reasonable for the planning or implementation of eligible activities.

39. **QUESTION:** Are the costs of preparing a work plan or the costs of work plan review by the DEQ considered eligible activities?

**ANSWER:** The reasonable costs of preparing a work plan or remedial action plan and the actual cost of the DEQ's review are eligible expenses.

40. **QUESTION:** Is lead and asbestos abatement an eligible activity?

**ANSWER:** Lead and asbestos abatement qualify as eligible activities for either DEQ or MEGA approval if:

DEQ – The eligible property is a facility, regardless of the property location, and demolition or lead or asbestos abatement is necessary as a response activity (i.e. demolition is necessary to address the contamination, the structure has been condemned and formally declared dangerous to the public, there has been a release of lead or asbestos to the environment, etc.)

MEGA – The eligible property is located in a qualified local governmental unit and is a facility, is blighted or functionally obsolete, and the demolition or lead or asbestos abatement is not a response activity, but is necessary for redevelopment activities to occur.

If the eligible property is located in a qualified local governmental unit and you are unsure which agency approval is needed, please call the DEQ and/or MEDC for assistance in making this determination.

Questions regarding regulations governing asbestos abatement practices should be directed to:

Environmental Protection: DEQ Air Quality Division  
517-373-7064

Worker Protection: Michigan Department of Consumer & Industry Services  
517-322-1320

Questions regarding regulations governing lead abatement practices should be directed to:

Residential Protection: Michigan Department of Community Health  
866-691-5323

Worker Protection: Michigan Department of Consumer & Industry Services  
517-322-1809

41. **QUESTION:** Is demolition an eligible activity?

**ANSWER:** Yes, and must be approved by either the DEQ or MEGA depending on the reason for the demolition. If the demolition qualifies as a response activity under Part 201 of the NREPA, approval is necessary from the DEQ. Demolition that is not a Part 201 response activity is eligible if conducted in a qualified local unit of government and approved by MEGA.

## STORAGE TANKS

42. **QUESTION:** Is the removal of underground storage tanks (USTs) and product from the USTs an eligible activity?

**ANSWER:** Generally, removal of USTs regulated under Part 211, Underground Storage Tank Regulations, of the NREPA (Part 211), is not an eligible activity. The owner is responsible for emptying the tanks and for removal/closure under Part 211. The DEQ may consider approval of school tax capture for UST removal under the following circumstances:

- a. The property is owned by the local unit of government or the state who acquired it involuntarily through tax-reversion.
- b. The property is owned by the local unit of government who acquired it voluntarily through eminent domain or for a nominal fee (i.e. a dollar).
- c. The USTs were previously unknown (i.e. they were discovered subsequent to performing adequate pre-purchase due diligence).

If the UST is not regulated under Section 21101(i) of the NREPA, (i.e. farm or residential tank of 1,100 gallons or less for storing motor fuel for noncommercial purposes, heating oil tank used for consumptive use on the premises, etc.), removal of the product and tank may be an eligible activity if necessary to meet due care obligations.

43. **QUESTION:** Is the cleanup of released product and/or contaminated resources from USTs an eligible activity?

**ANSWER:** These costs may be eligible to meet due care obligations or as an additional response activity if related to a release at an eligible property.

44. **QUESTION:** Is the installation of an UST system considered an eligible activity?

**ANSWER:** Only the incremental costs for elements of the system that are necessary to accomplish a BEA, meet due care obligations, or accomplish an additional response activity. For example, that increment of the UST system installation costs that are incurred to provide an “engineered control” means of distinguishing new releases from existing contamination for a category “S” BEA could be eligible (i.e. costs to provide a double wall or other means of establishing a leak detection zone between the new product and existing contaminated media.)

45. **QUESTION:** Is the removal of aboveground storage tanks (ASTs) and product from the ASTs considered an eligible activity?

**ANSWER:** Emptying/purging of ASTs regulated under The Michigan Fire Prevention Code, 1941 PA 207, as amended, and subsequent Executive Reorganization Orders 1997-2 and 1998-2, and the Flammable and Combustible Liquid Rules are not eligible activities. This is the responsibility of the property owner. Removal of the AST and addressing any resulting contamination may be eligible as due care or additional response activities.

### LIABILITY AND ACT 381

46. **QUESTION:** What if the property owner or developer is a liable party for the facility under Section 20126 of the NREPA?

**ANSWER:** Section 15(1)(e) of Act 381 prohibits a BRA from using captured school taxes for response activities that benefit a Section 20126 liable party. BRAs are responsible for inquiry into the status of liable parties for eligible properties, **including previous owners and operators**, and ensuring that work plans submitted for DEQ approval do not propose such activities. Section 15(1)(e) does not preclude the BRA from using captured local non-school taxes for such a project.

47. **QUESTION:** Can school taxes be used for response activities where the property owner or developer is a limited liability company (LLC) with a member who has liability under Section 20126 of the NREPA for contamination on the property?

**ANSWER:** No. Section 15(1)(e) of Act 381 prohibits a BRA from using captured school taxes for response activities that benefit a party who has liability under Section 20126. If an LLC has a member who is liable, the LLC is not eligible for reimbursement with school taxes based on the direct and/or indirect benefit that the liable party would receive.

48. **QUESTION:** Prior to implementing response activities with captured taxes, must the BRA notify a liable party and provide them with the opportunity to perform the response activities?

**ANSWER:** No.

**BROWNFIELD REDEVELOPMENT AUTHORITIES**  
Date filed with the Secretary of State

<u>Authority</u>	<u>Date Filed</u>	<u>Authority</u>	<u>Date Filed</u>
Township of Ada (Kent)	7/30/2004	City of Cadillac (Wexford)	12/6/1996
City of Adrian (Lenawee)	11/22/2000	Chtr Twp of Calumet (Houghton)	3/17/1999
City of Albion (Calhoun)	12/14/2000	Chtr Twp of Canton (Wayne)	4/4/2003
County of Alcona (Alcona)	4/16/2003	Village of Caro (Tuscola)	12/30/1997
City of Allegan (Allegan)	3/27/1998	Township of Carp Lake (Ontonagon)	9/10/1998
County of Allegan (Allegan)	12/1/2006	City of Cedar Springs (Kent)	10/28/1998
City of Allen Park (Wayne)	4/19/2001	City of Center Line (Macomb)	2/10/2005
City of Alpena (Alpena)	3/21/1997	Township of Central Lake (Antrim)	9/1/1998
County of Antrim (Antrim)	2/26/1999	County of Charlevoix (Charlevoix)	7/26/1999
County of Arenac (Arenac)	4/13/2001	City of Charlotte (Eaton)	8/23/2004
City of Auburn (Bay)	6/7/1999	City of Cheboygan (Cheboygan)	4/20/2004
City of Auburn Hills (Oakland)	9/30/1998	Chtr Twp of Chesterfield (Macomb)	1/10/2002
Chtr Twp of Bangor (Bay)	8/18/1999	County of Chippewa - townships of Chippewa, Raber and Whitefish (Chippewa)	12/12/1997
City of Bangor (Van Buren)	1/17/1997	County of Clare (Clare)	1/30/2001
Village of Baraga (Baraga)	9/21/1999	City of Clare (Clare/Isabella)	1/28/2000
County of Barry (Barry)	7/19/2002	Chtr Township of Clinton (Macomb)	5/2/2001
City of Battle Creek (Calhoun)	1/30/1998	City of Coldwater (Branch)	4/28/1997
Battle Creek/Kellogg R&D Site (Calhoun)	12/10/2002	Chtr Twp of Coloma (Berrien)	12/29/1997
City of Bay City (Bay)	2/6/1998	City of Coloma (Berrien)	7/28/1999
Township of Bedford (Monroe)	5/13/2004	County of Crawford (Crawford)	3/13/2001
City of Belding (Ionia)	2/26/1997	Township of Dalton (Muskegon)	10/20/1998
Chtr Twp of Benton (Berrien)	9/5/2003	City of Davison (Genesee)	6/1/1998
City of Benton Harbor (Berrien)	5/6/1998	City of Dearborn (Wayne)	6/19/1997
County of Berrien - townships of Niles and St. Joseph (Berrien)	2/1/2000	City of Dearborn Heights (Wayne)	12/9/1997
City of Bessemer (Gogebic)	2/10/1999	Chtr Township of Delhi (Ingham)	10/5/2001
City of Birmingham (Oakland)	4/28/2005	Chtr Township of Delta (Eaton)	7/5/2002
Village of Blissfield (Lenawee)	3/13/2006	City of Detroit (Wayne)	5/13/1998
Chtr Twp of Bridgeport (Saginaw)	9/29/1999	County of Dickinson (Dickinson)	4/17/2002
City of Bridgman (Berrien)	12/10/1999	City of Dowagiac (Cass)	7/11/2002
City of Brighton (Livingston)	3/27/1998	Village of Dundee (Monroe)	7/14/1998
City of Bronson (Branch)	2/25/1999	City of Eastpointe (Macomb)	3/27/1998
Chtr Twp of Brownstown (Wayne)	10/1/1997	Chtr Township of East China (St. Clair)	2/8/2002
City of Buchanan (Berrien)	7/29/1999	City of East Jordan (Charlevoix)	1/11/1999
Chtr Twp of Buena Vista (Saginaw)	5/10/2005		

**BROWNFIELD REDEVELOPMENT AUTHORITIES**  
Date filed with the Secretary of State

<u>Authority</u>	<u>Date Filed</u>	<u>Authority</u>	<u>Date Filed</u>
City of East Lansing (Ingham/Clinton)	8/28/2000	Township of Green Oak (Livingston)	9/13/2000
City of East Tawas (Iosco)	1/9/2004	Township of Grosse Ile (Wayne)	2/21/1997
County of Eaton (Eaton)	10/27/2004	Township of Hamburg (Livingston)	10/8/1999
City of Eaton Rapids (Eaton)	9/24/1998	Chtr Twp of Hampton (Bay)	11/22/1999
City of Ecorse (Wayne)	8/26/2004	City of Harbor Beach (Huron)	9/15/1999
Village of Elberta (Benzie)	3/24/1997	City of Harper Woods (Wayne)	3/25/2002
Chtr Twp of Emmet (Calhoun)	5/24/1999	City of Hastings (Barry)	10/1/1998
County of Emmet - city of Petoskey, village of Mackinaw City, townships of Bear Creek, Little Traverse and Pleasantview (Emmet)	1/25/1999	City of Hazel Park (Oakland)	7/2/1998
City of Escanaba (Delta)	12/16/1997	Chtr Township of Highland (Oakland)	5/21/2001
City of Essexville (Bay)	2/19/1998	City of Hillsdale (Hillsdale)	3/25/1999
City of Farmington (Oakland)	2/25/2002	County of Hillsdale (Hillsdale)	11/21/2006
City of Farmington Hills (Oakland)	3/2/2000	Chtr Township of Holland (Ottawa)	10/9/2003
City of Fennville (Allegan)	4/28/2005	City of Holland (Ottawa/Allegan)	9/26/2001
City of Fenton (Genesee)	8/8/2001	Village of Holly (Oakland)	9/15/1998
City of Ferndale (Oakland)	10/8/1999	City of Houghton (Houghton)	3/31/1997
City of Flint (Genesee)	2/9/1999	County of Houghton (Houghton)	6/29/2006
Village of Fowlerville (Livingston)	3/25/1997	City of Howell (Livingston)	11/9/2000
City of Frankfort (Benzie)	5/2/2000	City of Hudson (Lenawee)	7/13/2005
Township of Franklin (Houghton)	1/26/2006	County of Huron (Huron)	9/5/2000
City of Gaylord (Otsego)	10/14/2005	City of Imlay City (Lapeer)	8/11/2003
County of Genesee (Genesee)	7/20/2001	County of Ingham (Ingham)	11/20/2001
Township of Genoa (Livingston)	3/10/2004	City of Inkster (Wayne)	9/16/2002
City of Gladstone (Delta)	3/6/1998	City of Ionia (Ionia)	5/1/1997
County of Gogebic (Gogebic)	7/16/2003	County of Ionia (Ionia)	5/23/2001
City of Grand Blanc (Genesee)	5/21/2004	County of Iron (Iron)	11/3/1999
City of Grand Haven (Ottawa)	2/24/1998	City of Iron Mountain (Dickinson)	11/12/2003
City of Grand Ledge (Eaton)	3/17/1999	City of Iron River (Iron)	6/2/2006
City of Grand Rapids (Kent)	6/11/1997	City of Ironwood (Gogebic)	9/15/1997
County of Grand Traverse - city of Traverse City, townships of Blair, Fife Lake, Garfield, Green Lake and Mayfield (Grand Traverse)	10/29/1997	County of Isabella (Isabella)	4/9/2001
City of Grandville (Kent)	10/6/1998	City of Ishpeming (Marquette)	5/12/1998
County of Gratiot - all 16 townships, cities of Alma, Carson City, Ithaca and St. Louis, villages of Ashley, Breckenridge and Perrinton (Gratiot)	11/17/1998	City of Jackson (Jackson)	4/10/1997

**BROWNFIELD REDEVELOPMENT AUTHORITIES**  
Date filed with the Secretary of State

<u>Authority</u>	<u>Date Filed</u>	<u>Authority</u>	<u>Date Filed</u>
County of Jackson - townships of Blackman Chtr, Columbia, Concord, Grass Lake Chtr, Hanover, Henrietta, Leoni, Liberty, Napoleon, Norvell, Parma, Pulaski, Rives, Spring Arbor, Springport, Summit, Tompkins and Waterloo, villages of Brooklyn, Cement City, Concord, Grass Lake, Hanover, Parma and Springport (Jackson)	9/1/1999	City of Menominee (Menominee)	12/17/1998
City of Kalamazoo (Kalamazoo)	5/13/1997	City of Midland (Midland)	7/8/1999
Chtr Twp of Kalamazoo (Kalamazoo)	12/29/1997	City of Milan (Washtenaw/Monroe)	4/1/1997
County of Kalamazoo (Kalamazoo)	10/18/2002	Village of Milford (Oakland)	2/27/2002
Township of Kawkawlin (Bay)	7/3/2000	Chtr Twp of Monroe (Monroe)	11/18/1998
City of Kentwood (Kent)	1/6/2006	City of Monroe (Monroe)	2/10/1997
City of Kingsford (Dickinson)	11/8/1999	City of Montague (Muskegon)	12/22/1997
Chtr Twp of Kinross (Chippewa)	11/4/1998	County of Montcalm (Montcalm)	12/11/2006
Chtr Twp of Lake (Berrien)	10/13/1999	City of Morenci (Lenawee)	11/7/1997
County of Lake (Lake)	10/6/2005	City of Mt. Clemens (Macomb)	3/21/1997
Village of L'Anse (Baraga)	12/18/1998	City of Mt. Pleasant (Isabella)	5/23/1997
Chtr Township of Lansing (Ingham)	11/2/2006	City of Munising (Alger)	5/8/2002
City of Lansing (Ingham)	10/1/1997	Chtr Twp of Muskegon (Muskegon)	4/23/1998
City of Lapeer (Lapeer)	2/3/1998	City of Muskegon (Muskegon)	8/4/1997
County of Leelanau (Leelanau)	1/18/2007	City of Muskegon Heights (Muskegon)	7/16/1999
County of Lenawee (Lenawee)	1/25/2006	Township of Negaunee (Marquette)	6/30/1999
Chtr Township of Lincoln (Berrien)	9/26/2000	County of Newaygo (Newaygo)	12/20/2006
City of Lincoln Park (Wayne)	7/11/2002	City of Niles (Berrien)	8/6/1998
City of Litchfield (Hillsdale)	7/15/1999	City of Norton Shores (Muskegon)	12/16/1997
County of Luce (Luce)	2/19/2002	Chtr Twp of Northville (Wayne)	5/24/2005
County of Macomb (Macomb)	6/21/2001	<u>County of Oakland (Oakland)</u>	12/19/2002
City of Madison Heights (Oakland)	11/28/2001	City of Oak Park (Oakland)	10/11/2000
City of Manistee (Manistee)	6/14/2006	County of Ogemaw (Ogemaw)	7/26/2005
County of Manistee (Manistee)	6/27/2002	Village of Ontonagon (Ontonagon)	11/3/2003
City of Manistique (Schoolcraft)	4/2/2002	County of Osceola (Osceola)	10/6/2006
Township of Marenisco (Gogebic)	9/2/1999	County of Oscoda (Oscoda)	7/1/2003
City of Marquette (Marquette)	1/28/1998	City of Otsego (Allegan)	5/22/1998
City of Marshall (Calhoun)	2/24/1998	Township of Owosso (Shiawassee)	6/17/1999
County of Mason - city of Ludington (Mason)	11/17/2000	City of Owosso (Shiawassee)	4/29/1997
County of Mecosta (Mecosta)	3/12/2001	City of Parchment (Kalamazoo)	9/25/1998
City of Melvindale (Wayne)	7/16/1997	City of Petersburg (Monroe)	2/15/2006
		Village of Pinckney (Livingston)	9/29/2000
		City of Pinconning (Bay)	6/16/1998
		Township of Pinconning (Bay)	4/23/2003

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<u>Authority</u>	<u>Date Filed</u>	<u>Authority</u>	<u>Date Filed</u>
City of Plainwell (Allegan)	12/16/1997	City of Sault Ste. Marie (Chippewa)	12/4/1997
Chtr Twp of Plymouth (Wayne)	7/28/1998	County of Schoolcraft (Schoolcraft)	12/29/2005
City of Plymouth (Wayne)	4/14/1997	Township of Sheridan (Calhoun)	4/19/2000
City of Pontiac (Oakland)	12/26/1997	County of Shiawassee (Shiawassee)	8/10/2005
City of Portage (Kalamazoo)	8/15/2001	City of Southfield (Oakland)	10/15/2001
Village of Port Hope (Huron)	8/28/2000	Chtr Township of South Haven (Van Buren)	12/1/2006
Chtr Twp of Port Huron (St. Clair)	5/7/1999	City of South Haven (Van Buren/Allegan)	5/14/1997
City of Port Huron (St. Clair)	11/6/1997	Village of South Rockwood (Monroe)	5/27/2003
Village of Quincy (Branch)	4/24/2001	Village of Spring Lake (Ottawa)	7/14/1997
Chtr Twp of Redford (Wayne)	4/29/1997	City of Springfield (Calhoun)	12/11/1998
City of Reed City (Osceola)	5/5/2005	County of St. Clair (St. Clair)	5/19/2005
Village of Reese (Tuscola)	11/3/1999	City of St. Clair Shores (Macomb)	2/26/1997
Township of Republic (Marquette)	4/10/2003	City of St. Johns (Clinton)	8/29/2003
City of River Rouge (Wayne)	7/20/2004	City of St. Joseph (Berrien)	5/14/1997
City of Riverview (Wayne)	4/25/1997	County of St. Joseph (St. Joseph)	11/4/2004
City of Rochester (Oakland)	6/30/2005	City of Sterling Heights (Macomb)	1/9/2001
City of Rochester Hills (Oakland)	12/10/2002	City of Sturgis (St. Joseph)	3/31/1997
City of Rogers City (Presque Isle)	7/17/2000	City of Taylor (Wayne)	4/16/1997
City of Romulus (Wayne)	9/25/1998	City of Tecumseh (Lenawee)	10/31/2000
City of Roosevelt Park (Muskegon)	10/14/1997	Village of Tekonsha (Calhoun)	8/31/2000
Chtr Twp of Royal Oak (Oakland)	5/4/2005	City of Three Rivers (St. Joseph)	7/21/1997
City of Royal Oak (Oakland)	5/16/2000	Township of Torch Lake (Houghton)	3/2/1999
Chtr Twp of Saginaw (Saginaw)	5/28/1999	City of Trenton (Wayne)	2/24/1998
City of Saginaw (Saginaw)	12/17/1997	City of Troy (Oakland)	1/29/1999
County of Saginaw - cities of Frankenmuth and Zilwaukee, villages of Birch Run, Chesaning, Merrill, Oakley and St. Charles, townships of Albee, Birch Run, Blumfield, Brady, Buena Vista, Carrollton, Chapin, Chesaning, Frankenmuth, James, Jonesville, Kochville, Maple Grove, Marion, Richland, St. Charles, Spaulding, Swan Creek, Taymouth, Thomas, Tittabawassee and Zilwaukee (Saginaw)	6/7/1999	Township of Tuscola (Tuscola)	7/27/1999
City of Sandusky (Sanilac)	10/22/1999	County of Tuscola - city of Vassar, villages of Cass City, Fairgrove, Kingston, Mayville, Millington and Reese, townships of Akron, Almer, Columbia, Dayton, Elkland, Fremont, Indianfields, Vassar, Watertown and Wells (Tuscola)	9/29/2000
County of Sanilac - cities of Brown City, Crosswell, Marlette and Sandusky, townships of Argyle, Austin, Bridgehampton, Buel, Custer, Delaware, Evergreen, Flynn, Lamotte, Lexington, Marion, Marlette, Minden, Sanilac and Whealland, villages of Carsonville, Deckerville, Minden City and Port Sanilac (Sanilac)	2/23/2000	City of Utica (Macomb)	5/25/2001
		County of Van Buren (Van Buren)	6/3/2002
		Township of Vassar (Tuscola)	9/2/1997
		Village of Vicksburg (Kalamazoo)	3/17/1998
		City of Wakefield (Gogebic)	3/26/1998
		City of Walker (Kent)	7/21/1997



**BROWNFIELD REDEVELOPMENT AUTHORITIES**  
Date filed with the Secretary of State

<u>Authority</u>	<u>Date Filed</u>
City of Warren (Macomb)	4/5/2000
County of Washtenaw - cities of Saline and Ypsilanti, villages of Chelsea and Dexter, townships of Ann Arbor Chtr, Bridgewater, Lima, Lodi, Manchester, Pittsfield Chtr, Scio, Sharon, Superior Chtr, York Chtr and Ypsilanti Chtr (Washtenaw)	5/27/1999
Chtr Township of Waterford (Oakland)	4/3/2002
City of Watervliet (Berrien)	1/16/1997
Township of Watervliet (Berrien)	10/6/2000
County of Wayne - cities of Allen Park, Ecorse, Gibraltar, Hamtramck, Highland Park, Inkster, River Rouge, Riverview and Southgate, and township of Sumpter (Wayne)	7/16/1997
Township of Wells (Delta)	8/30/1999
Township of West Branch (Ogemaw)	6/3/1998
City of Westland (Wayne)	2/26/1997
City of Whitehall (Muskegon)	9/30/1998
City of Wyandotte (Wayne)	8/29/1997
City of Wyoming (Kent)	5/29/1997
Chtr Twp of Ypsilanti (Washtenaw)	9/15/1998
City of Ypsilanti (Washtenaw)	6/10/1997
Chtr Twp of Zeeland (Ottawa)	9/10/2003
City of Zeeland (Ottawa)	8/30/2002

July 18, 2006

**INSTRUCTIONS**  
FOR  
PREPARING AND SUBMITTING  
**WORK PLANS**

Under the authority of the Brownfield Redevelopment Financing Act,  
1996 PA 381, as amended

TO THE MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY



[www.michigan.gov/deq](http://www.michigan.gov/deq)  
Jennifer M. Granholm, Governor  
Steven E. Chester, Director

and

THE MICHIGAN ECONOMIC DEVELOPMENT CORPORATION



[www.michigan.org](http://www.michigan.org)  
Jennifer M. Granholm, Governor  
James C. Epolito, Chief Executive Officer

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# INTRODUCTION

## Background

The Brownfield Redevelopment Financing Act, 1996 PA 381, as amended (Act 381), established a method to finance environmental response activities at contaminated properties. It allows municipalities to develop and implement brownfield redevelopment financing plans to capture local and school property taxes from a contaminated property to cover the costs associated with conducting environmental response activities on that property.

Act 381 was amended in June 2000. The amendments provided municipalities with additional tools for brownfield redevelopment by allowing capture of local and school property taxes for a wider variety of properties and activities. In qualified local governmental units (see Appendix B), eligible properties include those that are blighted or functionally obsolete. Eligible activities include public infrastructure improvements, demolition, lead or asbestos abatement, and site preparation.

Act 381 was amended again in December 2002. The main provision was extension of the sunset through 2007 for approval of a work plan to capture school taxes to conduct eligible activities under a brownfield plan.

Amendments to Act 381 in January 2004 expanded the definition of eligible property to include tax reverted property owned or under the control of a land bank fast track authority and the definition of eligible activities to include assistance to a land bank fast track authority in clearing or quieting title to, or selling or otherwise conveying, property owned or under the control of a land bank fast track authority. In addition, taxes levied for school operating purposes can now be used for response activities associated with a landfill without consideration of liability.

Act 381, as amended, can be found at [www.legislature.mi.gov](http://www.legislature.mi.gov) by clicking on Public Act MCL Search and entering act number 381 and year 1996.

## General Provisions of Act 381, As Amended

- ◆ Allows a municipality to establish one or more brownfield redevelopment authorities (authority) to implement brownfield plans.
- ◆ Allows a county to operate an authority on behalf of a municipality located within the county only if the municipality concurs with the provisions of the brownfield plan for the eligible property located within the municipality.
- ◆ Allows an authority to develop a brownfield plan that identifies which properties the authority will conduct eligible activities on and from which it will capture taxes.
- ◆ Requires a municipality to hold a public hearing before approval of a brownfield plan.
- ◆ Defines an eligible property as property that was used or is currently used for commercial, industrial, or residential purposes and is in a qualified local governmental unit and is a facility as defined in Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), is functionally obsolete, or blighted. Eligible property also includes property that is not in a qualified local governmental unit and is a facility. Tax reverted property owned or under the control of a land bank fast track authority is an eligible property. Parcels that are contiguous and adjacent to that property are also considered eligible property if development of these parcels will increase the captured taxable value of that property.
- ◆ Defines eligible activities to include response activities to complete a Baseline Environmental Assessment (BEA), response activities needed for an owner or operator to comply with the due

care requirements of Part 201 of the NREPA, and additional response activities that are above and beyond BEA or due care activities for a facility. In a qualified local governmental unit, eligible activities also include public infrastructure improvements, demolition that is not a response activity, lead or asbestos abatement, and site preparation that is not a response activity. Assistance to a land bank fast track authority in clearing or quieting title to, or selling or otherwise conveying, property owned or under the control of a land bank fast track authority is an eligible activity. Relocation of public buildings and operations for economic development is also an eligible activity.

- ◆ Requires approval of a work plan by the Department of Environmental Quality (DEQ) or the Michigan Economic Growth Authority (MEGA) as appropriate, if school taxes will be captured to conduct eligible activities.
- ◆ Establishes a sunset date of December 31, 2007, for approval of Act 381 work plans if school taxes will be captured under a brownfield plan.
- ◆ Requires that MEGA approve a work plan for the project whether or not school taxes will be captured along with local taxes, if a brownfield plan includes properties that are adjacent or contiguous to an eligible property and taxes will be captured for public infrastructure improvements that directly benefit the eligible property or for demolition, lead or asbestos abatement or site preparation that are not response activities under Part 201 of the NREPA.

#### **Tax Capture Provisions**

- ◆ Allows all additional property taxes that come from the increased value of an eligible property over a base year (the year the property was added to the brownfield plan), including taxes levied for school operating purposes, to be captured. Taxes already captured as part of an existing tax increment financing plan (under other state laws) and taxes levied to pay off specific obligations are exempt.
- ◆ Requires that the percentage of local taxes captured must be equal to or greater than the percentage of school taxes captured, thus taking into account all tax capture plans in place, either under Act 381 or other state laws.
- ◆ Allows an authority to issue revenue and tax increment financing bonds and notes in order to finance the eligible activities and then capture taxes from the eligible property to pay off the obligations.
- ◆ Allows an authority to establish a local site remediation revolving fund and place excess captured taxes from properties at which eligible activities are conducted into the local fund. The authority can use the local fund to conduct eligible activities at other eligible properties.
- ◆ Prohibits the capture of excess school taxes for eligible activities approved by MEGA for the local site remediation revolving fund. However, the revolving fund may be used to fund MEGA eligible activities on eligible properties.
- ◆ Allows the capture of up to \$75,000 per year in local taxes for reasonable and actual administrative and operating expenses of the authority.
- ◆ Prohibits the use of school operating taxes for response activities that benefit a party who is liable under Section 20126 of the NREPA with the exception of response activities associated with a landfill.
- ◆ Allows the state or authority to take appropriate legal action to recover the costs of eligible activities funded through tax capture from person(s) who are liable for the contamination.

### Comments Invited

Comments on these instructions are welcome and should be directed to:

Michigan Department of Environmental Quality  
Remediation and Redevelopment Division  
P.O. Box 30426  
Lansing, Michigan 48909-7926

and

Michigan Economic Development Corporation  
Brownfield Redevelopment Program  
300 N. Washington Square, 3rd Floor  
Lansing, Michigan 48913

***Brownfield Program Information*** - For more information on Michigan's brownfield program see the Land Redevelopment section of the DEQ website at [www.michigan.gov/deq](http://www.michigan.gov/deq).

## GENERAL INSTRUCTIONS

*Prior to submission of an Act 381 work plan, we strongly recommend that the appropriate agency representatives be contacted to discuss the project* (see agency contacts below). This will help save time on preparation of the work plan, prevent inclusion of ineligible activities that would not be approved, and reduce agency review time and cost.

**Submission Instructions** - The work plan must be submitted to the DEQ and/or MEGA by the authority, not by the property owner, developer, consultant, etc. Work plans submitted by a party other than the authority will be returned to the sender without review. The work plan must include copies of the brownfield plan and resolution approving the brownfield plan by the governing body of the municipality. Do not submit a work plan until the brownfield plan has been approved.

Work plans submitted for DEQ review must be sent to the Remediation and Redevelopment Division (RRD). The RRD has the responsibility for reviewing and responding to Act 381 work plans. If the eligible property has environmental issues that cross DEQ division lines, the RRD will coordinate technical review with the appropriate DEQ divisions as necessary.

For eligible properties that have both DEQ and MEGA activities, only one work plan should be prepared. The work plan should be submitted to both agencies as indicated below.

### **Where and how many copies to submit for each agency:**

For Eligible Activities requiring **DEQ** approval: Send one (1) copy to the RRD in the district office serving your county (see DEQ/RRD Office Locations map at [www.michigan.gov/brownfieldauthority](http://www.michigan.gov/brownfieldauthority)) **and** one (1) copy to:

Darlene Van Dale  
Department of Environmental Quality  
Remediation and Redevelopment Division  
2100 West M-32  
Gaylord, MI 49735

*The official receipt date is the date the work plan is received in the DEQ district office.*

For Eligible Activities requiring **MEGA** approval: Administration of the program is through the Michigan Economic Development Corporation. Send three (3) copies to:

Peter Anastor  
Michigan Economic Development Corporation  
300 N. Washington Square, 3rd Floor  
Lansing, MI 48913

**Questions?** - Questions should be directed to the agency responsible for approving the eligible activity.

**DEQ** - General Contact:

Darlene Van Dale, 989-705-3453  
vandaled@michigan.gov

Site Specific Contact:

RRD staff in the district office serving your county (see DEQ/RRD Office Locations map at [www.michigan.gov/brownfieldauthority](http://www.michigan.gov/brownfieldauthority))

**MEGA** - General and Site Specific Contacts:

Peter Anastor, 517-373-9014  
anastorp1@michigan.org  
Jared Belka, 517-241-4801  
belkaj@michigan.org

**Work Plan Determination** - The statute specifies different review times depending on the type of eligible activities and which agency is completing the review. They are as follows:

**BEA and due care activities** - sixty (60) days for DEQ work plan review.

**MEGA eligible activities** – sixty-five (65) days for MEGA work plan review.

**Additional response activities** - the statute does not specify a review period; however, work plans must be reviewed within six (6) months under Part 201 of the NREPA. You can expect a response from the DEQ within this timeframe.

If a response is not received within the timeframes indicated above for BEA, due care, and MEGA activities, the work plans are considered approved. There is an exception to the BEA/due care review time. Please refer to Section 15(6) of Act 381 for details.

The statute requires a written response regarding work plan acceptability. For a combined DEQ/MEGA work plan, you will receive separate written responses from each agency regarding their review and determination.

**Work Plan Amendments** - Generally, work plan amendments do not involve changes to the brownfield plan or basic project information required by Section 15(2)(b-e) submitted with the original work plan. If this is the case, just the changes to the eligible activities, cost estimates, and all other pertinent information regarding the reason for the amendment need to be submitted for agency review. Should the work plan amendment require changes to the brownfield plan or basic project information, an entire revised package would be needed for agency review.

**Additional Work Plan(s)** - For work plan(s) submitted for approval subsequent to the original work plan, it is not necessary to re-submit the brownfield plan or basic project information required by Section 15(2)(b-e) if the brownfield plan or basic project information remains unchanged.

**Reasonable Costs** - As part of the work plan review process, the DEQ and MEGA must consider whether cost estimates for the proposed activities are reasonable. Proposed activities may be denied on the basis of unreasonably high costs. The governing body of the municipality is responsible for approving the brownfield plan and also has responsibility for assuring costs in the brownfield plan and work plan are reasonable. To provide some assurance in this area, the authority should request at least three (3) bids on costly work items.

**15 Percent Contingency** - A 15 percent contingency may be added to the estimated cost of the proposed activities. This allows for unforeseen circumstances and cost overruns and prevents the need to request additional agency approval, should the additional cost fall within the 15 percent. The 15 percent contingency will be allowed only on those eligible activities that are approved.

**Increased Costs** – If actual costs of the eligible activities will exceed the approved work plan costs (including the 15 percent contingency, if applicable), approval from the appropriate agency is necessary before the work is conducted and approved costs are exceeded.

**Work Plan Review Costs** - The DEQ and MEGA will invoice each authority for their work plan review costs as allowed by Act 381. Historically, review costs have been averaging approximately \$1,000 per work plan per agency. These costs should be itemized in the work plan. Be advised that if for any reason the project does not go forward and taxes are not captured, the authority will still be billed for work plan review costs. Authorities that are delinquent in the payment of their work plan review costs may have subsequent work plans administratively denied until payments are current or a payment plan is agreed to by DEQ or MEGA as appropriate.



**Administrative Costs** - The statute allows for up to \$75,000 in capture of local taxes for reimbursement of an authority's reasonable and actual administrative and operating expenses. Do not include these costs in the work plan, as they are not eligible for school tax capture.

**Interest Costs** – In general, school taxes will not be approved for the reimbursement of interest costs associated with financing of the eligible activities. At the discretion of the brownfield authority and the local unit of government, local taxes can be used for this purpose.

**Cost Gap Between a Brownfield and Greenfield Site -**

For **DEQ** activities that are necessary on both a brownfield site and a greenfield site, capture of school taxes will be allowed only for the increased costs in performing the activity due to it being a brownfield.

*Example:* Additional engineering and construction costs are necessary to construct a building foundation on unstable waste material. Document the cost gap by providing the cost of constructing the foundation on a greenfield site and brownfield site.

For **MEGA** activities document the cost difference between redevelopment of a brownfield site and development of a greenfield site by completing the Cost Gap Comparison form (see Exhibits and Appendix A).

**Work to be Conducted** - The statute only provides for approval of eligible activities that are to be conducted. Do not include activities or portions of activities that have already been started or are completed. Retroactive approval cannot be granted.

**Necessity of Work to be Conducted** - If the conduct of certain activities is dependent upon the results found during earlier work (particularly for environmental work), the pending work should be held for inclusion in a subsequent work plan after it is determined to be necessary. Hypothetical response activities will not be approved as eligible expenses.

**Unforeseen Environmental Conditions** - What do you do if you are conducting site work on a MEGA-eligible property and discover environmental contamination? In order for the response activities to be eligible for school tax capture, you must **not** conduct the work without prior approval from the DEQ. The brownfield plan must be amended to include the proposed response activities and a work plan submitted to the DEQ for review. Be advised that Part 201 of the NREPA requires that a BEA be conducted prior to or within 45 days after becoming an owner or operator of a facility in order to have liability protection for pre-existing contamination at the site.

**Additional Response Activities** - The conduct of additional response activities is at the discretion of the authority. The statute does not require DEQ approval for additional response activities unless school taxes will be captured. If a work plan is not approved by the DEQ, capture of school taxes for reimbursement of the cost of the additional response activities is not allowed. At the discretion of the authority and governing body, capture of local taxes is allowed.

**Demolition and Lead/Asbestos Abatement** - Demolition and lead and asbestos abatement qualify as eligible activities for both DEQ and MEGA approval if:

**DEQ** – The eligible property is a facility, regardless of the property location, and demolition or lead or asbestos abatement is necessary as a response activity (e.g., demolition is necessary to address the contamination, the structure has been condemned and formally declared dangerous to the public, there has been a release of lead or asbestos to the environment).

**MEGA** – The eligible property is located in a qualified local governmental unit and is a

facility, is blighted or functionally obsolete, and the demolition or lead/asbestos abatement is not a response activity, but is necessary for redevelopment activities to occur.

If the eligible property is located in a qualified local governmental unit and you are unsure which agency approval is needed, do not include the activity for review by both agencies in the work plan. Please contact the DEQ and/or MEDC for assistance in making this determination.

**Underground Storage Tanks (USTs)** - Generally, removal of USTs regulated under Part 211, Underground Storage Tank Regulations, of the NREPA, is not an eligible activity and should not be included in a work plan. The property owner is responsible for emptying the tanks and for removal/closure under Part 211. The DEQ may consider approval of school tax capture for UST removal under the following circumstances:

1. The property is owned by the local unit of government or the state who acquired it involuntarily through tax-reversion.
2. The property is owned by the local unit of government who acquired it voluntarily for a nominal fee (e.g., a dollar).
3. The USTs were previously unknown (e.g., they were discovered subsequent to performing adequate pre-purchase due diligence).

Cleanup of contamination from the UST system may be an eligible due care activity or additional response activity. Compliance with Part 213, Leaking Underground Storage Tanks, of the NREPA, is required for all regulated UST work.

If the UST is not regulated under Part 211 per Section 21101(i), (i.e., farm or residential tank of 1,100 gallons or less for storing motor fuel for noncommercial purposes, heating oil tank used for consumptive use on the premises, etc.), then removal of the product and tank may be eligible as a due care or additional response activity.

**Aboveground Storage Tanks (ASTs)** - Emptying/purging of ASTs regulated under the Michigan Fire Prevention Code, 1941 PA 207, as amended, and subsequent Executive Reorganization Orders 1997-2 and 1998-2, and the Flammable and Combustible Liquid Rules are not eligible activities. These are the responsibility of the property owner. Removal of the AST and addressing any resulting contamination may be eligible as due care or additional response activities.

**Environmental Sampling** - For all proposed sampling activities, include the type(s) of samples to be collected (soil, groundwater, waste, sediments, surface water, etc.), method of sample collection (surface soil, hand auger, drill rig, geoprobe, temporary well, monitor well, etc.), number of samples, and analytes for each type of sample. A Proposed Sampling Location Map is required as an Exhibit.

**Liable Parties** - Section 15(1)(e) of Act 381, as amended, prohibits an authority from capturing school taxes to conduct response activities that benefit a party liable under Section 20126 of the NREPA with the exception of response activities associated with a landfill. Under Act 381, it is considered a benefit to a Section 20126 liable party only if the developer or person seeking reimbursement for eligible activities at the eligible property is liable under Section 20126 of the NREPA. Authorities are responsible for inquiry into the status of liable parties for eligible properties and assuring that work plans submitted for DEQ approval do not propose such activities. If liability for contamination on the eligible property is uncertain, we recommend contacting the DEQ for assistance in determining the potential liability prior to preparation of a brownfield plan or submission of a work plan.

**School Tax Capture** - Brownfield plans and work plans contain cost estimates for the proposed eligible activities to be undertaken at an eligible property. The amount of allowable tax capture, including school taxes, is limited to the actual costs of the eligible activities as approved by the

DEQ and/or MEGA, except as provided by Section 8 of Act 381 for deposit into the local site remediation revolving fund. ***Unless explicitly stated in the DEQ and/or MEGA approval to be otherwise, capture of school taxes in addition to local taxes to reimburse the cost of eligible activities in work plans approved by DEQ or MEGA shall be consistent with the existing ratio of school to local taxes being captured at the time such approval is granted.***

***Tax Capture Table*** - For work plans containing both DEQ and MEGA eligible activities, it will be necessary to provide a tax capture table that identifies the repayment of environmental response costs and the repayment of redevelopment costs separately. This is due to separate legislative reporting requirements for each agency. We recommend that separate tax capture tables be prepared for approval in the brownfield plan.

***DEQ Grant/Loan and State Tax Credit Coordination*** - School taxes cannot be captured for any eligible activities that are funded by DEQ grants or claimed under state tax credits (e.g., Site Assessment Grant, Brownfield Redevelopment Grant, Single Business Tax Brownfield Redevelopment Credit). If school taxes will be captured to repay a DEQ loan, approval of the Act 381 work plan and of the loan is required prior to commencing work. In addition, a liable party may not benefit by repayment of the loan with school taxes.

***Ineligible Activities/Expenses*** - In addition to the activities previously mentioned, the following activities and expenses are not eligible for school tax capture:

- Generic closures under Part 201 of the NREPA, unless specifically pre-approved by division management or equal in cost to other appropriate due care options.
- Attorney fees (may be an eligible expense for MEGA projects).
- Permitting fees.
- Site improvements.
- Preparation or amendment of a brownfield plan.
- Administration by staff of the local unit of government.
- Land acquisition.
- Costs incurred for environmental response or redevelopment activities outside of a DEQ or MEGA-approved work plan.
- Registration fees, including registration of an underground storage tank.
- Taxes (except sales tax).
- Surface debris/solid waste disposal, except demolition of buildings when qualified as a response activity, as contaminated wastes, or for structural support issues.
- Equipment purchase, maintenance, and repairs.
- Third party damages.
- Insurance (may be an eligible expense for MEGA projects).
- Subcontractor markup fees.

*(WORK PLAN COVER PAGE)*

**ACT 381  
WORK PLAN  
TO CONDUCT  
ELIGIBLE  
DEQ RESPONSE  
AND/OR  
MEGA NON-ENVIRONMENTAL  
ACTIVITIES**

**PROJECT NAME  
PROJECT ADDRESS**

**Date**

# **WORK PLAN OUTLINE**

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### **ATTACHMENTS**

- Attachment A Approved Brownfield Plan with approving resolution
- Attachment B Cost Gap Comparison Form
- Attachment C Development Agreement between Municipality and Property Owner or Developer
- Attachment D Documentation of Local Unit of Government's Declaration of Dangerous Building
- Attachment E Documentation of Local Unit of Government's Declaration of Blighted and/or Level 3 or Level 4 Assessor's Signed Affidavit for Functionally Obsolete

# OUTLINE INSTRUCTIONS

Following is the minimum information necessary for submission of an Act 381 work plan. Please include any other information, reports, maps, tables, etc. that you feel are pertinent for review and consideration of your work plan.

## 1.0 INTRODUCTION

### **Eligible Property Information**

**Location** - Include street address, city or township, county, parcel number(s) for each parcel, and, if available, total acreage. Provide property location map and surrounding area map as Figures 1 and 2 in the Exhibits portion of the work plan.

**Current Ownership** - Name, address, and contact person for all current owner(s). If property ownership has changed within the past six (6) months, provide the name of the previous owner.

**Proposed Future Ownership** - Name, address, and contact person for all known future owner(s).

**Delinquent Taxes, Interest, and Penalties** - Total of delinquent taxes including penalties and interest for each eligible property.

**Existing and Proposed Future Zoning** - Identify existing and proposed future zoning for each eligible property. Indicate if the zoning will remain unchanged.

**Historical Use of Each Eligible Property** - Summarize the historical use of each eligible property dating back as far as information is available. Include the types of residential, commercial, and industrial uses and the corresponding dates for each use. Provide the name(s) of previous owners and operators. Include the types of equipment, machinery, storage tanks, etc. that were operated on each property and known or possible hazardous substance use.

**Current Use of Each Eligible Property** - Summarize the type(s) of residential, commercial, and industrial uses that are currently operating on each eligible property. Indicate which uses will continue operating after redevelopment. Also, indicate if the property is vacant.

**Proposed Redevelopment and Future Use** - Summarize the proposed redevelopment project including the types and sizes of the structures, for what purposes they will be used, the number of new jobs created, the amount of private investment, and the total cost of the project. Provide a rendering of the redevelopment as an Exhibit.

**Information Required by Section 15(15) of the Statute** - Work plans submitted for MEGA consideration should also address the following issues:

- What is the overall benefit to the public?
- To what extent will the project result in the reuse of vacant buildings and redevelopment of blighted property?
- To the extent it is practical, explain how many jobs will be created by the project and the type of jobs; a) fulltime, part-time, managerial, professional.
- Is the eligible property in an area of high unemployment?
- What will be the level and extent of contamination alleviated by or in connection with the eligible activities?
- What is the level of private sector contribution to the project?

- If a greenfield site was considered, what is the cost gap between the site and a similar greenfield site? Alternatively, what extraordinary costs for this site are related to it being a brownfield? Complete the Cost Gap Comparison form (see Exhibits).
- If the developer or projected occupant of the new development is moving from another location in this state, will the move create a brownfield?
- Provide project pro forma, which demonstrates that the project is sound. Provide financial statements or other acceptable documentation which demonstrates the project can be successfully financed.
- Identify the amount of all anticipated federal, state, or local incentives that directly or indirectly benefit this project.
- Provide any additional information you want MEGA to consider while reviewing this work plan.

## 2.0 CURRENT PROPERTY CONDITIONS

**Property Eligibility** - Indicate if the property is a facility, located in a qualified local governmental unit, functionally obsolete and/or blighted or tax reverted property owned or under the control of a land bank fast track authority. Describe why the property is eligible for school tax capture under Act 381. Properties that are adjacent or contiguous to the eligible property but located outside of the local unit of government and/or brownfield plan area are not eligible properties.

**Summary of Environmental Conditions** - *This information is required for an eligible property that is a facility.* Provide what is known about environmental contamination for each eligible property. Summarize the results of previous environmental studies including Phase I and II environmental site assessments, baseline environmental assessments, remedial investigations, etc. Indicate what conditions make the property a facility including the types of contaminants and concentrations found above residential cleanup criteria. Include a site map identifying the contaminated areas (with soil borings and monitor well locations) and concentrations, if available. Provide information about persons who may be liable for the contamination.

**\*Special Note Regarding Contaminated Properties** – The above information is also required for eligible property that is a facility or is believed to be a facility but DEQ approval to capture school taxes for environmental activities is not being requested. MEGA requires that the property be investigated to the extent necessary for a reasonable identification of eligible activities and cost necessary to address the contamination. A description of existing conditions and anticipated environmental activities must be submitted to MEGA. MEGA approval of non-environmental activities may be conditioned on certain requirements intended to protect the environment and public health, safety, or welfare consistent with applicable state and/or federal laws.

**Summary of Functionally Obsolete and/or Blighted Conditions** - *This information is required for work plans that contain eligible activities for MEGA approval.* Describe why the property is blighted and/or functionally obsolete as defined in Sections 2(e) and 2(p), respectively, of Act 381. If a project is on property that is functionally obsolete an affidavit signed by a level 3 or level 4 assessor is required as an Exhibit, which states in the assessor's expert opinion that the property is functionally obsolete and the underlying basis for that opinion. If a property is blighted a detailed description of the conditions of the property and pictures, or a formal declaration by the local unit of government designating the area blighted, should be provided.



### 3.0 SCOPE OF WORK

**All proposed activities and costs are for work to be conducted and must be consistent with the approved brownfield plan.**

**DEQ Eligible Activities** - Proposed activities should be placed into one of the following categories. Provide as much detail as possible regarding each proposed activity and the reason the activity is necessary.

**Baseline Environmental Assessment (BEA)** - activities may include:

- Environmental assessments.
- Sampling and analysis.
- Data interpretation and reporting.
- Development and installation of engineering controls or isolation zones.
- Disclosure of BEA.
- Petitioning for a DEQ determination.

**Due Care** - activities to meet Section 7a obligations may include:

- Investigation (sampling, analysis, interpretation, reporting) to define contamination.
- Assessment of intended use with regard to contamination and identification of 7a issues.
- Development of a plan for response activities to meet 7a obligations.
- Contaminant treatment or removal to prevent exposure or exacerbation.
- Barriers to prevent exposure, exacerbation, or third party impacts.

**Additional Response Activities** - The DEQ has the authority to consider the level of risk reduction that will be accomplished in determining whether to approve or deny the following activities:

- Evaluation including investigation and feasibility study.
- Interim response activity.
- Remedial action.
- Demolition that is a response activity. Describe why it is necessary for environmental and/or public health, safety, or welfare reasons. If the demolition is necessary for public health, safety, or welfare reasons, documentation that the local unit of government has formally declared the building a danger to the community must be provided in the Attachments. Include the size, type, and number of structures, the demolition procedure, dust suppression method and recycling/disposal practices. It is recommended that bids be obtained for all demolition activities.
- Lead abatement that is a response activity. Describe why it is necessary for environmental and/or public health, safety, or welfare reasons. Include the types of lead abatement activities to be performed. Provide procedure and disposal practices. This includes surveying for lead-containing materials and sampling.
- Asbestos abatement that is a response activity. Describe why it is necessary for environmental and/or public health, safety, or welfare reasons. Include the type of asbestos abatement activities to be performed. Provide procedure and disposal practices. This includes surveying for asbestos-containing materials and sampling.
- Other actions necessary to protect the public health, safety, welfare, environment, or natural resources.

**MEGA Eligible Activities** - Proposed activities should be placed into one of the following categories. Provide as much detail as possible regarding each proposed activity and existing conditions which make the activity necessary.

- **Public Infrastructure Improvements** - These activities are defined as improvements to a substructure or underlying foundation, basic installations, and facilities on which the

growth of a community or state depend (typically publicly owned or located in a right-of-way or easement). This includes roads, storm and sanitary sewers, transportation and communication systems, etc., located in a right-of-way or easement. It also includes public utilities providing water, electricity, etc. to the public, operated, usually as a monopoly, by a private corporation, under governmental regulation or by the government directly. These activities include connection of public utilities up to the eligible property line. They do not include connections to the building. Provide maps showing the location of the public infrastructure improvements relative to the project as an Exhibit. As appropriate, identify per unit cost of the improvements and describe the size and scale of the project in terms of linear feet, square footage or other appropriate measures.

- **Demolition** - Describe why demolition is necessary for the redevelopment project. Include the size, type, and number of structures to be demolished, the demolition procedure, dust suppression method and recycling/disposal practices. It is recommended that bids be obtained for all demolition activities.
- **Lead Abatement** - Describe why lead abatement is necessary for the redevelopment project. Include the types of lead abatement activities to be performed. Provide procedure and disposal practices. This includes surveying for lead-containing materials and sampling.
- **Asbestos Abatement** - Describe why asbestos abatement is necessary for the redevelopment project. Describe the condition of the asbestos-containing materials. Include the type of asbestos abatement activities to be performed. Provide procedure and disposal practices. This includes surveying for asbestos-containing materials and sampling.
- **Site Preparation** - Includes those activities that are necessary to prepare the site for construction. Such activities may include the following: relocation of existing utilities; addition and/or removal of soils; trenching and pit excavation costs; clearing and grubbing; land balancing; grading; test borings; foundation work to address special soil concerns; soft costs directly associated with site preparation activities or to ready the property for sale or transfer, including engineering, design, legal and professional fees and costs including title work, commitments and insurance, title clearance and quieting costs, costs of notices and service process, court costs and recording fees, surveys, etc.; or other such costs related to the above and at the discretion of the MEGA. Permitting fees are not eligible.
- **Assistance to a land bank fast track authority** - identify activities necessary to clear or quiet title to, or sell or otherwise convey, property owned by a land bank fast track authority.
- **Relocation of Public Buildings or Operations** - Public buildings or operations can be moved for economic development purposes. Prior approval from MEGA is required. The qualified local unit of government must describe how the relocation will benefit economic development and provide detailed plans and maps showing the current usage and proposed changes for the eligible properties.

## 4.0 SCHEDULE AND COSTS

**Activities or portions of activities completed prior to work plan approval, other than work plan preparation, are not eligible for school tax capture and should not be included in the schedule or costs.**

**Schedule of Activities** - Provide an anticipated schedule for completing the proposed eligible activities. Show the month and year the activities are to be completed. For BEA and due care activities, sixty (60) days for the DEQ work plan review should be reflected in the schedule. For additional response activities, allow six (6) months for the DEQ work plan review. Sixty-five (65) days should be incorporated into the schedule for the MEGA work plan review.

**Estimated Costs** - Costs should be itemized by subtasks within each type of proposed eligible activity (e.g., BEA, due care, public infrastructure improvements, demolition, etc.). Estimates should include a line item for work plan preparation costs and the DEQ and/or MEGA work plan review costs. For cost planning purposes, work plan review costs are approximately \$1,000 per work plan per agency. If the costs to conduct the eligible activities will be financed by the authority or community through the issuance of bonds or notes and school tax capture is being sought for reimbursement of interest expense, include these costs as a separate line item in the estimated costs. **Separate** agency cost estimate and tax capture tables must be provided as Exhibits.

**EXHIBITS** - Exhibits are required for all projects unless indicated otherwise.

### **Figures**

- Figure 1 Scaled Property Location Map
- Figure 2 Surrounding Area Property Map - include zoning and adjacent property use.
- Figure 3 Proposed Sampling Location Map - this is required for DEQ work plans where environmental sampling is proposed.
- Figure 4 Site Photographs - include "before" photographs of the eligible property. Digital photographs may be requested by the reviewing agency. Photographs of the property after redevelopment may also be requested.
- Figure 5 Map showing public infrastructure improvements.
- Figure 6 Rendering of the redevelopment project.

### **Tables**

- Table 1 DEQ Eligible Activities Costs
- Table 2 MEGA Eligible Activities Costs
- Table 3 (& 4) Tax Capture Table - for work plans containing both DEQ and MEGA eligible activities, it will be necessary to provide a tax capture table that identifies the repayment of environmental response costs and the repayment of redevelopment costs separately. Separate tables for repayment of each agency's activities are required.

### **Attachments**

- Attachment A Brownfield Plan - the brownfield plan must be approved by the governing body and a copy of the signed resolution approving the plan must be attached.
- Attachment B Cost Gap Comparison Form – is required for MEGA projects where an alternative greenfield site was considered for the project. Document the cost difference between redevelopment of a brownfield site versus development of a greenfield site. See form in Appendix A
- Attachment C An executed copy of the Development Agreement between the Municipality and Property Owner or developer - this is required for MEGA projects. The development agreement must include: a) terms and conditions for the acquisition of property associated with the project; b) development objectives; c) performance and financial responsibilities of the local community; d) performance and financial responsibilities

of the developer and e) defaults and remedies. In addition, the agreement shall include the identification of all ownership interests; monetary considerations, fees, revenue and cost sharing, charges, other financial arrangements; and other consideration between the parties.

Attachment D Documentation of Local Unit of Government's Declaration of a Dangerous Building - this is required for DEQ demolition projects.

Attachment E Documentation of Local Unit of Government's Declaration of Blighted and/or Level 3 or Level 4 Assessor's Signed Affidavit for Functionally Obsolete - these are required for MEGA projects.

## Appendix A

### MEGA Cost Gap Comparison Form

## FOR MEGA REVIEW

Complete this Cost Gap Comparison. If no alternative Greenfield site was considered for the project check here  and only complete the cost information for the Brownfield site.

Brownfield Site/Location	Greenfield Site/Location
--------------------------	--------------------------

**Infrastructure Costs** (include hook-up costs, but not recurring charges)

	Brownfield Site	Greenfield Site	Cost Difference
Water			
Sewer			
Gas			
Electricity			
Road			
Railroad			
<b>Total Infrastructure Costs</b>	\$	\$	\$

**Real Property Costs**

	Brownfield Site	Greenfield Site	Cost Difference
Land Acquisition			
Demolition			
Environmental Response			
Site Improvements			
Site Preparation			
Zoning, Permits & Inspections			
Building - Purchase			
Building - New Construction			
Building - Annual Lease			
Leasehold Improvements			
<b>Total Real Property Costs</b>	\$	\$	\$

**Taxes** (net of abatements and credits)

	Brownfield Site	Greenfield Site	Cost Difference
Local Business Income			
Real Property - Land			
Real Property - Building			
Personal Property			
<b>Total Annual Tax Costs</b>	\$	\$	\$

**Other Operating Costs** (recurring)

	Brownfield Site	Greenfield Site	Cost Difference
Labor			
Insurance			
Other _____			
Other _____			
<b>Total Other Costs</b>	\$	\$	\$

<b>Grand Total</b>	\$	\$	\$
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<b>Total Difference</b>	\$
-------------------------	----

**Appendix B**  
**Qualified Local Governmental Units**

Adrian	Detroit	Iron River	Onaway
Albion	Dowagiac	Ironwood	Owosso
Alma	East Lansing	Ishpeming	Pinconning
Alpena	Eastpointe	Jackson	Pontiac
Ann Arbor	Ecorse	Kalamazoo	Portage
Baldwin	Escanaba	Lansing	Port Huron
Bangor	Ferndale	Lincoln Park	Redford Twp. (in Wayne Co.)
Battle Creek	Flint	Livonia	River Rouge
Bay City	Gaastra	Ludington	Royal Oak Twp. (in Oakland Co.)
Benton Harbor	Genesee Twp. (in Genesee Co.)	Manistee	Saginaw
Benton Twp. (in Berrien Co.)	Gibraltar	Manistique	Saint Louis
Bessemer	Gladstone	Marquette	Sault Saint Marie
Big Rapids	Grand Haven	Melvindale	Southfield
Bronson	Grand Rapids	Menominee	Stambaugh
Buena Vista Twp. (in Saginaw Co.)	Grayling	Midland	Sturgis
Burton	Hamtramck	Monroe	Taylor
Cadillac	Harbor Beach	Mount Clemens	Three Rivers
Carson City	Harper Woods	Mount Morris	Trenton
Caspian	Hart	Mt. Morris Twp. (in Genesee Co.)	Traverse City
Center Line	Hartford	Mount Pleasant	Vassar
Cheboygan	Hazel Park	Muskegon	Wakefield
Coldwater	Highland Park	Muskegon Heights	Warren
Coleman	Holland	Norton Shores	Wayne
Crystal Falls	Inkster	Norway	Wyandotte
Dearborn	Ionia	Oak Park	Wyoming
Dearborn Heights	Iron Mountain	Omer	Ypsilanti

NOTE: All units are cities unless otherwise designated.

## Appendix C

### GLOSSARY

The following words and phrases are used in this Instruction document. Actual definitions can be found in the Brownfield Redevelopment Financing Act, 1996 PA 381, as amended (Act 381), or Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA).

**"Additional response activities"** means response activities identified as part of a brownfield plan that are in addition to baseline environmental assessment activities and due care activities for an eligible property.

**"Authority"** means a brownfield redevelopment authority created under Act 381.

**"Baseline Environmental Assessment" or "BEA"** is 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.

**"Baseline Environmental Assessment activities"** means those response activities identified as part of a brownfield plan that are necessary to complete a BEA for an eligible property in the brownfield plan.

**"Blighted"** means property that has been declared a public nuisance in accordance with a local housing, building, plumbing, fire, or other related code or ordinance; is an attractive nuisance to children because of physical condition, use, or occupancy; is a fire hazard or is otherwise dangerous to the safety of persons or property; has had the utilities, plumbing, heating, or sewerage permanently disconnected, destroyed, removed, or rendered ineffective so that the property is unfit for its intended use; or is tax-reverted property owned by a qualified local governmental unit, by a county, or by this state. The sale, lease, or transfer of tax-reverted property by a qualified local governmental unit, county, or this state after the property's inclusion in a brownfield plan shall not result in the loss to the property of the status as blighted property for purposes of this act.

**"Board"** means the governing body of an authority.

**"Brownfield plan"** means a plan that meets the requirements of Section 13 and is adopted under Section 14 of Act 381.

**"Due care activities"** means those response activities identified as part of a brownfield plan that are necessary to allow the owner or operator of an eligible property in the plan to comply with the requirements of Section 20107a of the NREPA.

**"Eligible activities"** means BEA activities, due care activities, additional response activities, and relocation of public buildings or operations for economic development purposes. In a qualified local governmental unit, eligible activities also mean infrastructure improvements that directly benefit eligible property, demolition of structures, lead or asbestos abatement, and site preparation. Assistance to a land bank fast track authority in clearing or quieting title to, or selling or otherwise conveying, property owned or under the control of a land bank fast track authority is also an eligible activity.

**"Eligible property"** means property for which eligible activities are identified under a brownfield plan that was used or is currently used for commercial, industrial, or residential purposes and is either in a qualified local governmental unit and is a facility, functionally obsolete, or blighted, or is



not in a qualified local governmental unit and is a facility. Tax reverted property owned or under the control of a land bank fast track authority is also an eligible property.

**"Facility"** means any area, place, or property where a hazardous substance in excess of the concentrations that satisfy the requirements of Section 20120a(1)(a) or (17) or the cleanup criteria for unrestricted residential use under Part 213, of the NREPA, has been released, deposited, disposed of, or otherwise comes to be located.

**"Functionally obsolete"** means that the property is unable to be used to adequately perform the function for which it was intended due to a substantial loss in value resulting from factors such as overcapacity, changes in technology, deficiencies or superadequacies in design, or other similar factors that affect the property itself, or the property's relationship with other surrounding property.

**"Governing body"** means the elected body having legislative powers of a municipality creating an authority under Act 381.

**"Infrastructure improvements"** means a street, road, sidewalk, parking facility, pedestrian mall, alley, bridge, sewer, sewage treatment plant, property designed to reduce, eliminate, or prevent the spread of identified soil or groundwater contamination, drainage system, waterway, waterline, water storage facility, rail line, utility line or pipeline, or other similar or related structure or improvement, together with necessary easements for the structure or improvement, owned or used by a public agency or functionally connected to similar or supporting property owned or used by a public agency, or designed and dedicated to use by, for the benefit of, or for the protection of the health, welfare, or safety of the public generally, whether or not used by a single business entity, provided that any road, street, or bridge shall be continuously open to public access and that other property shall be located in public easements or rights-of-way and sized to accommodate reasonably foreseeable development of eligible property in adjoining areas.

**"Land bank fast track authority"** means an authority created under the land bank fast track act, Public Act 258 of 2003.

**"Local taxes"** means all taxes levied other than taxes levied for school operating purposes.

**"Municipality"** means a city; a village; a township in those areas of the township that are outside of a village; a township in those areas of the township that are in a village upon the concurrence by resolution of the village in which the zone would be located; or a county.

**"Qualified local governmental unit"** means that term as defined in the Obsolete Property Rehabilitation Act.

**"Remedial Action Plan"** means a plan that meets both of the following requirements:  
(1) Is a remedial action plan as that term is defined in Section 20101 of the NREPA and  
(2) Describes each individual activity to be conducted to complete the eligible activities, and the associated costs of each individual activity.

**"Response activity"** means evaluation, interim response activity, remedial action, demolition, or the taking of other actions necessary to protect the public health, safety, or welfare, or the environment, or the natural resources.

**"Work plan"** means a plan that describes each individual activity to be conducted to complete eligible activities and the associated costs of each individual act.

## Summary of the Brownfield Redevelopment Financing Act, Public Act 381 of 1996, as amended

The Brownfield Redevelopment Financing Act, 1996 PA 381, as amended (Act 381), established a method to finance environmental response activities at contaminated properties. It allowed municipalities to develop and implement brownfield redevelopment financing plans to capture local and school property taxes from a contaminated property to cover the costs associated with conducting environmental response activities on that property.

Act 381 was amended in June of 2000. The amendments provided municipalities with additional tools for brownfield redevelopment by allowing capture of local and school property taxes for a wider variety of properties and activities. In qualified local governmental units, eligible properties include those that are blighted or functionally obsolete and eligible activities include infrastructure improvements, demolition, lead or asbestos abatement, and site preparation.

Act 381 was amended again in December of 2002. The main provision was extension of the sunset through December 2007 for approval of work plans to capture school taxes to conduct eligible activities under a brownfield plan.

Act 381, as amended, can be found at [www.michiganlegislature.org](http://www.michiganlegislature.org).

### GENERAL PROVISIONS

- A municipality may establish one or more brownfield redevelopment authorities (authority) to implement brownfield plans.
- A county may operate an authority on behalf of a municipality located within the county only if the municipality concurs with the provisions of the brownfield plan for the eligible property located within the municipality.
- An authority may develop a brownfield plan that identifies which properties the authority will conduct eligible activities on and from which it will capture taxes.
- A municipality must hold a public hearing before approval of a brownfield plan.

### TAX CAPTURE PROVISIONS

- All additional property taxes, including taxes levied for school operating purposes, that come from the increased value of an eligible property over a base year (the year the property was added to the brownfield plan) can be captured. For the purposes of this act, school taxes are considered the local school operating tax and the state education tax. Taxes already captured as part of an existing tax increment financing plan (under other state laws) and taxes levied to pay off specific obligations are exempt.
- Approval of a work plan by the Department of Environmental Quality (DEQ) and the Michigan Economic Growth Authority (MEGA) is necessary if school taxes (local school operating tax and the state education tax) will be captured to conduct eligible activities.
- MEGA must approve a work plan for a project whether or not school taxes will be captured along with local taxes if a brownfield plan includes properties that are adjacent or contiguous to an eligible property and taxes will be captured for public infrastructure improvements that directly benefit the eligible property or for demolition, lead or asbestos abatement or site preparation that are **not** response activities under Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA).
- The percentage of local taxes captured must be equal to or greater than the percentage of school taxes captured - taking into account all tax capture plans in place, either under Act 381 or other state laws.
- An authority may issue revenue and tax increment financing bonds and notes in order to finance the eligible activities and then capture taxes from the eligible property to pay off the obligations.
- An authority may establish a local site remediation revolving fund and place excess captured taxes from properties at which eligible activities are conducted into the local fund. The authority can use the local fund to conduct eligible activities at other eligible properties.
- Excess school taxes for eligible activities approved by MEGA cannot be captured for the local site remediation revolving fund. However, the revolving fund may be used to fund MEGA eligible activities on eligible properties.
- An authority may capture up to \$75,000 per year in **local** taxes for reasonable and actual administrative and operating expenses of the authority.

- School taxes may not be used for response activities that benefit a party who is liable under Section 20126 of Part 201 of the NREPA.
- The state or authority may take appropriate legal action to recover the costs of eligible activities funded through tax capture from person(s) who are liable for the contamination.

#### **HOW CAPTURED TAXES CAN BE USED**

Captured taxes can be used to cover the costs of one or more eligible activities that are conducted at the eligible property from which the captured taxes are generated.

- **Eligible property**

An eligible property is property that was used or is currently used for commercial, industrial, or residential purposes and is either in a qualified local governmental unit and is a facility as defined in Part 201 of the NREPA, is functionally obsolete, or blighted **OR** is not in a qualified local governmental unit and is a facility. Parcels that are contiguous and adjacent to that property are also considered eligible property if development of these parcels will increase the captured taxable value of that property.

- **Eligible activities**

For a **facility** requiring DEQ approval:

- Response activities to complete a Baseline Environmental Assessment (BEA).
- Response activities needed for an owner or operator to comply with the due care requirements of Part 201 of the NREPA.
- Additional response activities that are above and beyond BEA or due care activities for a facility.

In a **qualified local governmental unit** requiring MEGA approval:

- Public infrastructure improvements.
- Demolition that is not a response activity.
- Lead or asbestos abatement.
- Site preparation that is not a response activity.

Relocation of public buildings and operations for economic development is also an eligible activity requiring MEGA approval.

Captured taxes can only be used for the cost of the eligible activities and for the following: the cost of principal and interest of any obligations issued by the authority to finance the eligible activities and the cost of preparing and approving work plans for the eligible activities.

An authority can capture local and school property taxes from an eligible property in excess of the amount needed to pay for the eligible activities approved by DEQ. The excess captured taxes must be placed into a local site remediation revolving fund to be used only for eligible activities at other eligible properties within the brownfield plan area. This excess capture can continue for up to five years after the aforementioned costs are covered. Excess school tax capture is limited to the actual cost of the response activities or up to five years, whichever comes first. Excess school taxes cannot be captured on activities approved by MEGA; however, the revolving fund may be used to fund MEGA eligible activities on eligible properties.

#### **WORK PLANS**

The authority determines which of the eligible activities will be conducted at an eligible property. An authority cannot capture school taxes to conduct the eligible activities unless the activities are consistent with a work plan approved by the DEQ or MEGA prior to the work being conducted. Work plans for school tax capture must be approved by the end of December 2007. For adjacent or contiguous properties, see reference in Tax Capture Provisions above regarding additional circumstances under which MEGA approval is required.

The work plan must be submitted to the DEQ and/or MEDC by the authority, not by the property owner, developer, consultant, etc. The work plan must include a copy of the brownfield plan as approved, by resolution, by the governing body of the municipality. For eligible properties that have both DEQ and MEGA activities, one work plan should be prepared for submission to both agencies. Detailed instructions for preparing and submitting a work plan under Act 381 can be found by linking to [Act 381 Work Plan Instructions](#) (Microsoft Word format). It is **strongly recommended** that the appropriate agency representative be contacted to discuss the project **prior** to submission of an Act 381 work plan (see agency contacts below). This will help save time on preparation of the work plan, prevent inclusion of ineligible activities that would not be approved, and reduce agency review time and cost. Sufficient time must be allowed for work plan review and must be taken into consideration during the planning phase of the project. The statute allows different review times depending on the type of eligible activities to be conducted and which agency is completing the review.

- DEQ BEA and due care activities: 60 days.
- MEGA eligible activities: 65 days.
- DEQ additional response activities: The statute does not specify a review period; however, work plans must be reviewed within six (6) months under Part 201 of the NREPA. You can expect a response from DEQ within this timeframe.

The statute requires a written response regarding work plan acceptability. For a combined DEQ/MEGA work plan, you will receive separate written responses from each agency regarding their review and determination.

#### **QUESTIONS?**

For answers to questions frequently asked of the DEQ regarding Act 381, please link to the [Frequently Asked Questions](#) document in Microsoft Word format.

Questions regarding preparation and submission of an Act 381 work plan should be directed to the agency responsible for review of the eligible activity.

DEQ-Remediation and Redevelopment Division

Darlene Van Dale, 989-705-3453, [vandaled@michigan.gov](mailto:vandaled@michigan.gov) or

Ron Smedley, 517-373-4805, [smedleyr@michigan.gov](mailto:smedleyr@michigan.gov)

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#### **Brownfield Redevelopment Authorities**

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Redeveloping brownfields reduces urban sprawl into greenfield areas by encouraging the reuse of established commercial, industrial and residential properties where public services already exist. To encourage brownfield redevelopment, the [Brownfield Redevelopment Financing Act](#), 1996 PA 381, as amended (Act 381), allows local units of government to establish one or more Brownfield Redevelopment Authorities (BRAs) to identify and plan for reuse of brownfield properties.

BRAs can adopt brownfield plans, which identify the eligible activities to be conducted on an eligible property, and provide for the use of [tax increment financing](#) to capture property taxes to reimburse the costs of the eligible activities. The property owner may also apply for a Single Business Tax [Brownfield Redevelopment Credit](#) for eligible investments made at an eligible property if included in a brownfield plan adopted under Act 381.

The Brownfield Redevelopment Financing Act and the Single Business Tax Brownfield Redevelopment Credit are two of the many tools communities are using to help level the playing field for brownfield properties that would otherwise be unable to compete with greenfield space for development. A [Summary of Act 381](#) is available, as well as a list of the [Brownfield Redevelopment Authorities](#) in Michigan.

#### **Contacts:**

For brownfield redevelopment questions contact the DEQ Remediation and Redevelopment Division:

Darlene Van Dale, 989-705-3453, [vandaled@michigan.gov](mailto:vandaled@michigan.gov) or

Ron Smedley, 517-373-4805, [smedleyr@michigan.gov](mailto:smedleyr@michigan.gov)