

## ALERTS

### Environmental Law Alert - New Michigan Laws Are A Boon For Brownfields Development

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A package of six laws aimed at incentivizing “brownfields” redevelopment in Michigan passed the state legislature in December 2016 and was signed by Gov. Rick Snyder on Jan. 4. Public Acts 471 through 476 are the culmination of two years of work by the Michigan Department of Environmental Quality’s (MDEQ) Continuous Program Improvement-Collaborative Stakeholder Initiative (CPI-CSI) to harmonize and streamline the laws governing environmental remediation and associated financial incentives. This bipartisan legislation also represents a compromise among diverse interest groups to balance encouraging redevelopment and maintaining the state’s tax base and environmental protections.

Sponsors of the package intend for the bills to spur economic growth in Michigan communities by expanding and clarifying the types of remediation activities and redevelopment projects eligible to receive financing and tax benefits.

These significant amendments to the Brownfield Redevelopment Financing Act (MCL 125.2652 et seq.) and several sections of the Natural Resources and Environmental Protection Act (NREPA) (MCL 324.19508 et seq.) include:

- Consolidating several key definitions for potentially eligible brownfield activities, including baseline environmental assessments (BEAs), due care (section 7a) continuing obligations, and response actions under the umbrella term “Department Specific Activities”
- Adding several common remediation activities to the list of activities eligible for brownfield redevelopment funding, including among others:
  - Removal and closure of underground storage tanks (UST) pursuant to NREPA Parts 211 and 213
  - Solid waste disposal (provided the waste was not generated or accumulated by the developer)
  - Removal and disposal of lake sediment exceeding Part 201 cleanup criteria, and sheeting and shoring necessary to remove materials requiring permits under Part 301 (inland lakes and streams), 303 (wetlands), or 325 (Great Lakes submerged lands)
  - Industrial cleaning of a facility, including lead, mold, or asbestos abatement

## RELATED PEOPLE



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- Environmental insurance costs
- Data tracking and compliance for brownfield plan and work plan implementation
- Clarifying that while the revised provisions still preclude a party who caused the contamination from participation in brownfields benefits, a party that is only strictly liable without fault can be eligible, as can local units of government (LUGs) responsible for the contamination under certain circumstances
- Streamlining the Tax Increment Financing (TIF) application process by authorizing the chairperson of the Michigan strategic fund to approve brownfields work plans up to \$1 million without a meeting of the fund board
- Creating a Clean Michigan Initiative (CMI) grant and revolving loan program for local units of government, and making grants under this fund available for determining whether a site is contaminated (e.g., Phase I/II Environmental Assessments), with certain limitations
- Revising the CMI bond fund law to conform to the amendments in this package

MDEQ is slated to soon issue a memorandum clarifying how these bills will affect statutory reorganization.

Passage of these brownfield redevelopment bills is particularly noteworthy in light of the failure of a similar package in 2016 that contained significant tax incentives focused primarily on financially benefitting developers – the “Transformational Brownfield” legislation.

For more information on Michigan brownfields redevelopment, site cleanups, and related MDEQ regulatory matters, contact the Barnes & Thornburg attorney with whom you work, or one of the following: Lydia Barbash-Riley at [Lydia.Barbash-Riley@btlaw.com](mailto:Lydia.Barbash-Riley@btlaw.com) or (616) 742-3945; Charles Denton at [Charles.Denton@btlaw.com](mailto:Charles.Denton@btlaw.com) or 616-742-3974; Tammy Helminski at [Tammy.Helminski@btlaw.com](mailto:Tammy.Helminski@btlaw.com) or (616) 742-3926; or Joel Bowers at [Joel.Bowers@btlaw.com](mailto:Joel.Bowers@btlaw.com) or (574) 237-1287.

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