

# OVERVIEW OF FEDERAL & STATE BROWNFIELDS PROGRAMS

By Kevin A. Lavallo

**G**ault  
**D**avison, P.C.

Attorneys and Counselors-at-Law  
G-8455 S. Saginaw, Ste. 2  
Grand Blanc, MI 48439  
(810) 234-3633  
[www.gaultdavison.com](http://www.gaultdavison.com)

## **OVERVIEW OF FEDERAL & STATE BROWNFIELDS PROGRAMS**

Mention the word “Brownfield” and many people conjure up a mental image of an old abandoned factory littered with half full barrels of hazardous substances. Some may think of the abandoned gas station at the corner of the block. Still, others may think of the vacant lot across the street littered with empty barrels or containers. While these types of properties are all certainly potential Brownfield sites, most people do not realize that Brownfield programs have evolved from their early beginnings as simple tools to cleanup contaminated property into complex vehicles to facilitate redevelopment of undesirable properties, both of the contaminated and uncontaminated variety.

### **A. THE BEGINNINGS**

In the late 1970s, audiences of network news were treated to images of white suited investigators poking around the Love Canal site. Over the years, the Hooker Company had buried 21,000 tons of hazardous wastes in a 36-block area of Niagara Falls, New York. The federal government found itself ill prepared to address a major health hazard of this magnitude. In response, Congress enacted the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq., commonly referred to as “CERCLA” or “Superfund.” This statute brought environmental awareness to the forefront of the American conscience.

Not only was CERCLA designed to cleanup major sites of environmental contamination, it also created a mechanism to force potentially responsible parties (“PRPs”) to pay for cleanups. The price tag associated with a CERCLA cleanup can be staggering. Unfortunately, the net cast by the liability provisions of CERCLA caught many PRPs who had little, if any, connection to the activities that actually caused the contamination.

While CERCLA was successful at cleaning up sites, it also increased awareness in the regulated community of who could be considered a PRP and the potential expense that comes with that designation. This had an unintended consequence. It created a cloud over all potentially contaminated properties. In judging old industrial sites, there is no such thing as a presumption of innocence. These sites are all deemed to be contaminated. While its true that many urban properties were left in less than pristine condition considering the less restrictive (or completely absent) environmental regulations of the past, many properties were presumed to be guilty by association without any actual testing data be collected to substantiate that claim

Anyone thinking about developing an old industrial site faced a number of hurdles. They ran the risk of being labeled a “PRP.” Testing to determine if a site is contaminated is expensive especially on larger sites. If the site was found to contain hazardous substances, cleanup was not only costly but almost guaranteed that the Developer would become embroiled in protracted litigation over who would bear the cost of cleanup (need I say Berlin & Farro).

Not wanting to fall into any of these traps, developers began to steer clear of potentially contaminated properties. The result was an odd assortment of properties being placed in redevelopment limbo. In turn, these abandoned sites hastened the further deterioration of urban neighborhoods. Not only did old abandoned industrial sites put a dent in the local income tax base, they also brought down the value of surrounding properties resulting in a further decline in property tax revenues.

The Federal agency charged with administering CERCLA, the Environmental Protection Agency (“EPA”), stood up and took notice. With several years of experience implementing CERCLA under its belt, the EPA turned its resources to addressing lesser-contaminated sites that did not warrant a major cleanup under CERCLA. The EPA began a Brownfield Economic Redevelopment Initiative in 1993 to address sites that were minimally contaminated and did not pose a serious public health risk. It began to fund cleanups at these sites using monies appropriated under CERCLA even though they were designated to address more serious threats to public health. By the time Congress got around to investigating the misappropriation of earmarked funds, the EPA Brownfield program had proved to be so popular, that Congress concluded that separate appropriations should be made to continue funding Brownfield projects.<sup>1</sup>

As Brownfield programs took off, the search for an appropriate definition of what constitutes a Brownfield began. The United States Conference of Mayors described them as “dead zones” within cities that further degrade the surrounding neighborhood.<sup>2</sup> In early 2002, the Small Business Liability Relief and Brownfield Revitalization Act took a more diplomatic approach and amended CERCLA to define a Brownfield site as:

Real property, the expansion, redevelopment or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant or contaminant. 42 U.S.C. 9601(39)(A).

Although the technical definition does not embody any reference to a specific geographic type or area, implicit in this definition is the notion that most Brownfield sites will be located in urban areas such as the City of Flint.

## **B. EARLY IMPEDIMENTS TO REDEVELOPING BROWNFIELD SITES**

Shortly after the birth of the EPA Brownfield program, both Federal and State governments began to change their approach on how they dealt with sites of contamination. Like most states, Michigan had its own version of a CERCLA statute. Michigan’s version went by the name of the Michigan Environmental Response Act (“MERA”), MCL 299.601 et seq. Like CERCLA, owners and operators of contaminated property were subject to strict liability under the MERA for cleanup costs regardless of whether they caused or contributed to the contamination. The simple act of purchasing contaminated property made one as equally liable for the cost of cleanup as was the person who actually caused the contamination.

Michigan codified all its state statutes pertaining to environmental regulation under the Natural Resources and Environmental Protection Act (“NREPA”), MCL 324.8501 et seq., in 1995. In the process, the Michigan Legislature repealed the MERA and replaced it with what is commonly known as “Part 201” of NREPA, MCL 324.20101 et seq. The liability scheme under Part 201 is vastly different than that of the MERA. Most of the strict liability provisions were abolished and a liability scheme based on fault was adopted.

In an attempt to speed up the redevelopment of contaminated properties, the Legislature created a mechanism by which purchasers of contaminated property could avoid imposition of being labeled a PRP. Any person who is acquiring contaminated property can (and should)

---

<sup>1</sup> 7-731: “Superfund and the Brownfields Issue,” Mark Reisch, Congressional Research Service Report, July 24, 2000.

<sup>2</sup> “Background on Brownfields,” United States Conference of Mayors, 2008.

perform a Baseline Environmental Assessment (“BEA”). A BEA is an evaluation of the environmental conditions existing on a property that defines the conditions on the property to the extent that if there is a subsequent release of hazardous substances, there is a means to distinguish the new contamination from the old. To secure liability protection, a BEA must be conducted prior to or within 45 days of purchase. If properly completed, A BEA gives developers a means to reliably shield themselves from becoming an unwitting participant in the payment of cleanup costs associated with pre-acquisition contamination. A word of caution is necessary. Part 201 does contain one vestige of strict liability. If a developer chooses to purchase property that is contaminated without performing a BEA, they will join the ranks of PRPs.

In addition to changing the liability scheme, to further boost the redevelopment of Brownfield sites, the State of Michigan also revised its cleanup standards. Prior to 1995, Michigan had primarily operated with a one size fits all cleanup scheme. Post 1995, cleanup standards across the board became less stringent. In addition, because sites are used for different uses, a sliding scale of cleanup levels was implemented based on the future use of the property and the affected resources. Thus, developers not only had a means to escape the draconian liability scheme of the past, they also had a means to lower the costs on sites where protection of the public health mandated performance of a cleanup.

Even with removal of the threat of liability and the reduced cleanup standards, the need for additional action became apparent. Many Brownfield sites continued to sit on the sidelines. The old real estate mantra of location, location, location continued to haunt these sites. Some of these sites had inherent flaws such as inadequate infrastructure or limited accessibility. Others were located in unfavorable neighborhoods and developers shared a reluctance to invest in distressed communities due to a variety of urban socio-economic conditions.



Figure 1: Abandoned sludge pit<sup>3</sup>

---

<sup>3</sup> Courtesy of Acadia Environmental, LLC, North Branch, Michigan.

## C. EVOLUTION OF BROWNFIELD PROGRAMS

Brownfield programs were initially carved out from environmental programs designed to address the threat of contamination. Beginning in early 2000, Brownfield projects were no longer viewed merely as extensions of environmental cleanup programs and took on the persona of tools designed to further urban growth management initiatives. The same market factors that impacted contaminated properties also affected non-contaminated ones. Even when contamination is not an issue, these sites are still often located in less than desirable areas and the playing field needed to be leveled to allow these sites to effectively compete with Greenfield sites<sup>4</sup> for development projects. To address these issues, some governmental bodies expanded their definition of what constitutes a Brownfield site and began to offer incentives programs to address the negative market factors associated with these properties.

To that end, the State of Michigan significantly expanded the potential properties eligible for treatment as a Brownfield site. Michigan's Brownfield Redevelopment Financing Act, MCL 125.2652 differs from its Federal counterpart in that Michigan's does not contain a definition of a "Brownfield site." Instead, Michigan's statute employs the concept of an "Eligible Property." To understand the concept of "Eligible Property," one must first understand the term "Qualified Local Governmental Unit."

### 1. QUALIFIED LOCAL GOVERNMENTAL UNIT.

The State of Michigan developed the concept of a Qualified Local Governmental Unit to revitalize traditional regional centers of commerce and assist them in effectively competing for development.<sup>5</sup> These communities are generally the more economically challenged ones. The criteria to determine whether a municipality is eligible to be classified as a Qualified Local Governmental Unit are set forth in the Obsolete Property Rehabilitation Act, MCL 125.2782. The term Qualified Local Governmental Unit is sometime used interchangeable with the term "Core Community." Flint is designated as a Qualified Local Governmental Unit.<sup>6</sup>

If a property is located in a Qualified Local Governmental Unit, it can become eligible for treatment as a Brownfield under a number of different circumstances; i.e. it is deemed to be an "Eligible Property."

Contaminated sites<sup>7</sup> are Eligible Properties. The Michigan Department of Environmental Quality ("DEQ") maintains a database of sites where hazardous substances have been identified in the soil and/or groundwater. Sites located in the City of Flint that appear in this database are presented on Exhibit1. These sites are all potentially Eligible Properties.

---

<sup>4</sup> Greenfield sites are undeveloped lands on the outskirts of urbanized areas. They include farmland, woodlands and vacant fields. Many developers prefer to develop these sites in order to avoid real or perceived difficulties with Brownfield sites.

<sup>5</sup> "Core Communities Fund," Michigan Economic Development Corporation, 2001.

<sup>6</sup> Burton, Mt. Morris, Genesee Township and Mt. Morris Township are the only other municipalities in Genesee County considered to be Qualified Local Governmental Units.

<sup>7</sup> The Michigan Brownfield Redevelopment Financing Act uses the word "facility" to define a site of environmental contamination. The term "facility" is a technical term defined in Section 20101 of NREPA. It generally means an area, place or property where hazardous wastes exist in excess of the cleanup criteria established for unrestricted residential use. MCL 324.20101(o).

The DEQ also maintains a database of sites where leaking underground storage tanks has been identified. The DEQ refers to these sites as LUST sites. A map showing the LUST sites identified in the City of Flint appears in Exhibit 2. They too are potential eligible Properties.



Figure 2: LUST Site<sup>8</sup>

Properties owned or under the control of a Land Bank Authority are Eligible Properties. Genesee County is the home to a critically acclaimed Land Bank Authority. A map showing the locations of properties owned or controlled by the Land Bank Authority appears in Exhibit 3.

In addition to contaminated properties and those owned by the Land Bank Authority, property that is “functionally obsolete” allows is an Eligible Property when it’s located in a Qualified Local Governmental Unit.<sup>9</sup> The same holds true for property that meets the technical definition of “blighted” contained in the Michigan’ Brownfield Redevelopment Financing Act,

---

<sup>8</sup> Courtesy of Acadia Environmental, LLC, North Branch, Michigan.

<sup>9</sup> Property is considered to be functionally obsolete if it 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 super adequacies in design, or other similar factors that affect the property itself or the property's relationship with other surrounding property. MCL 125.2652(m).

MCL 125.2652. If blighted property is located in a Qualified Local Governmental Unit,<sup>10</sup> it falls under the definition of an Eligible Property.

Historically, if a property was not located in a Qualified Local Governmental Unit, it had to be contaminated to be eligible for treatment as a Brownfield site. The Brownfield Redevelopment Financing Act has been amended to allow blighted and obsolete properties in Non Qualified Local governmental Units to access some benefits available under the act. However, the designation of a Qualified Local Government Unit maximizes the pool of properties eligible for treatment as a Brownfield in the City of Flint and allows them complete access to all of the benefits available under the act.

## 2. INCENTIVES

To promote the reuse of Brownfield sites, the United States Government and the State of Michigan have created a wide range of incentive programs. At the Federal level, the U.S. Environmental Protection Agency offers funding to public entities to foster redevelopment on Brownfield sites through the following grant and loan programs:

- ▶ The Brownfield Assessment Demonstration Pilot Program, which provides grants up to \$200,000 for site assessments.
- ▶ The Brownfield Cleanup Revolving Loan Fund Program, which provides up to \$1,000,000 for cleanups.<sup>11</sup>
- ▶ The Brownfield Cleanup Grant Program, which provides up to \$200,000 for cleanups.

---

<sup>10</sup> Blighted property is property that meets any of the following criteria as determined by the governing body [emphasis added]:

- (i) Has been declared a public nuisance in accordance with a local housing, building, plumbing, fire, or other related code or ordinance.
- (ii) Is an attractive nuisance to children because of physical condition, use, or occupancy.
- (iii) Is a fire hazard or is otherwise dangerous to the safety of persons or property.
- (iv) 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.
- (v) 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.
- (vi) Is property owned or under the control of a land bank fast track authority under the land bank fast track act, whether or not located within a qualified local governmental unit.
- (vii) Has substantial subsurface demolition debris buried on site so that the property is unfit for its intended use.

<sup>11</sup> The City of Flint and Genesee County each maintain \$1,000,000 in revolving loan funds to promote cleanups of Brownfield sites.

- ▶ The Brownfield Job training Program, which provides up to \$200,000 for job training activities.

The U.S. Department of Housing and Urban Development provides federal funding for community development activities including Brownfield assessments and cleanups through the following programs:

- ▶ Community Development Block Grant Program - funds may be used for Brownfield related activities including site assessments, cleanups, demolition, rehabilitation and construction.
- ▶ Section 108 Loan Program - provides guaranteed loans for Brownfield redevelopment activities.
- ▶ Brownfield Economic Development Initiative - provides competitive grant funding to communities for activities related to the redevelopment of Brownfield sites.

The City of Flint has been successful in securing money available under Federal Brownfield programs. In 2004, the City was awarded a \$200,000 EPA Assessment Grant to perform Phase I Environmental Site Assessments at priority sites in the City targeted for redevelopment.<sup>12</sup> Genesee County received an identical award.<sup>13</sup> The City has also received an award from the EPA Job Training Program in 2001 in the amount of \$200,000.

At the State level, there are two major incentives available for use at Eligible Properties. The first incentive consists of Michigan Business Tax Credits. These credits range from 12.5% of eligible investments up to 20% for certain Urban Development Area Projects. The Michigan Economic Growth Authority (MEGA) Board is responsible for administering the award of these incentives. The MEGA uses these credits to level the playing field between Brownfield and Greenfield sites by addressing the cost differences between the two as well as development risks and other relevant local market conditions. Developers who lack significant tax liabilities may sell these tax credits. They can also be used as a refundable tax credit up to 85% of their value.

The second type of incentive available to facilitate redevelopment of Brownfield sites is Tax Increment Financing. Cleanup and redevelopment of a Brownfield property will increase the taxable value of the property, and therefore, the property taxes generated from the property. This increase in tax revenue is the tax increment. The increased tax revenues can be used to pay back the expenses of eligible activities [discussed below] dollar for dollar incurred by a developer. The taxes eligible for capture are all ad valorem property taxes including taxes levied for school operating purposes. The capture of school operating taxes requires approval from the MDEQ or Michigan Economic Growth Authority and may not be the most popular move in an era of decreased funding for schools.

---

<sup>12</sup> "Brownfields 2004 Grant Fact Sheet," U.S. EPA 560-F-04-237, June 2004.

<sup>13</sup> "Brownfields 2004 Grant Fact Sheet," U.S. EPA 560-F-04-133. At the same time, Genesee County was also awarded an EPA Brownfield Revolving Loan fund Grant in the amount of \$2,000,000.

### 3. ELIGIBLE ACTIVITIES

Not only do more properties qualify as Eligible Properties when they are located in a Qualified Local Governmental Unit, but the number of activities eligible for reimbursement under a Brownfield plan also increases. Eligible activities entitled to be repaid with Brownfield incentives include:

- Cost to prepare a BEA,
- Due care activities,<sup>14</sup>
- Cleanup costs,
- Relocation of public buildings or operations for economic development purposes,
- Reasonable costs of developing and preparing Brownfield plans, and
- Cost of Environmental Insurance.

If the property is located in a Qualified Local Governmental Unit, infrastructure improvements directly benefiting the property, demolition of structures, lead or asbestos abatement and site preparation costs (over and above activities involved in cleanup of the site) are also deemed to be eligible activities.<sup>15</sup>

#### D. THE FINE PRINT

The Michigan Economic Development Corporation has established policies to effectuate its goals in redeveloping Eligible Properties.<sup>16</sup> First and foremost, the MDEC has expressed a desire for projects that:

- (1) Use State and Local Tax Increment financing to reimburse a developer for the costs of addressing onsite conditions necessary to make a Brownfield site comparable to a Greenfield site, and
- (2) The host community demonstrates strong local support for a project especially when the developer seeks to receive consideration for MTB credits. Example of strong local support would include TIF, tax abatements, land cost write downs, Neighborhood Enterprise Zones, Obsolete Property Rehabilitation, local revolving loan funds or façade grants.

---

<sup>14</sup> Although an owner or operator of contaminated property may not be considered a PRP, nonetheless, if they know the property is contaminated, they have certain affirmative obligations to prevent the spread of the contamination and protect the public from it, MCL 324.20107a. These obligations are commonly referred to as "due care" obligations.

<sup>15</sup> Infrastructure improvements that directly benefit Eligible Property includes 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.

<sup>16</sup> 2009 MEDC Brownfield Program Guidelines

MEGA has stated that for 2009, its primary focus will be on projects that:

- (1) Are multistory, mixed use and located in urban areas particularly a traditional downtown, a Qualified Local Governmental Unit or within walking distance of a downtown,
- (2) Projects that alleviate significant contamination, and
- (3) Projects that have a strong economic development rationale by furthering the statewide industrial diversification goals.

Projects seeking a 20% Michigan Business Tax Credit must be located in a downtown or traditional commercial corridor of a Qualified Local Governmental Unit. Criteria that MEGA considers to evaluate these types of projects include whether the project:

- 1) Increases density by promoting multistory development with a preference for three floor or higher,
- 2) Promotes mixed-use development and walkable communities,
- 3) Promotes sustainable development (with a preference for LEED certification),
- 4) Addresses area wide redevelopment and include multiple properties,<sup>17</sup> and
- 5) Addresses underserved markets of commerce.

MEGA has articulated additional policy considerations for evaluating projects seeking an award of incentives. Retail projects are looked upon favorably only when they will be part of a larger mixed unit redevelopment in a historically underserved market. MEGA will not consider Michigan Business Tax Credits for big box retailers or single story strip malls. It will not generally support the use of state school tax for reimbursement of public infrastructure or site preparation work in on projects unless they are located in a Qualified Local Governmental Unit. Projects that have a single State of Michigan or Federal Government tenant may be supported by TIF if that assists in the elimination of Brownfield conditions. MEGA will not support a project of this nature by Michigan Business Tax Credits unless there is a strong economic development rationale. Finally, housing projects located within distressed, highly urban areas that act as a catalyst to improve a neighborhood will be considered on a case-by-case basis. Low-income housing will be considered but MEGA prefers market rate or projects with a mix of market rate and low-income housing.

## **E. MAKING IT ALL HAPPEN = BROWNFIELD REDEVELOPMENT AUTHORITIES**

Any municipality wishing to utilize the procedures in the Brownfield Redevelopment Financing Act must create a Brownfield Redevelopment Authority. The act lays out a series of

---

<sup>17</sup> A number of large former automobile facilities involving multiple properties have been successfully redeveloped (or in the process of being redeveloped). See "Shifting Gears, Driving Toward Auto Sector Property Revitalization," U.S. EPA 560-R-07-001, April 2008.

steps necessary to form an authority. Establishing a Brownfield Development Authority allows a municipality to:

- ▶ The ability to focus development in existing service areas,
- ▶ Enhance the tax base through private development,
- ▶ Receive multiple taxing jurisdiction participation in redevelopment financing,
- ▶ Provide reimbursement for eligible Brownfield activities, and
- ▶ Market difficult sites for private investment

Once established, a Brownfield Redevelopment Authority can do all the things necessary or convenient to achieve the objectives and purposes of the act. This includes reviewing proposals for redevelopment of Eligible Properties and determines what financial incentives are proper to assist in that redevelopment. The authority will then make recommendations to the governing board of the municipality to approve or disapprove the proposed plan.

On July 28, 1997, the City of Flint City Council adopted a resolution creating a Brownfield Redevelopment Authority. The current makeup of the City of Flint Brownfield Redevelopment Authority is:

- Mayor Dayne Walling
- Larry Ford
- Marshall Sanders
- Jean Conyers
- Donna Dodds Hamm
- Councilman Erhen Gonzales
- Councilman Kerry Nelson

There are two open positions. The Authority is under the supervision and control of the Board of Directors of the Economic Development Corporation for the City of Flint.

A list of Approved Brownfield Projects located in the City of Flint appears in Exhibit 4. This list is not complete and there is at least one additional project, the IRS Building, which should be added. A request was made to the City for information on the types of incentives awarded to each project, the cost to the City and the number of jobs created by these projects. That information was not provided.

## F. RECOMMENDATIONS

As with any incentive program, a host community can be asked to shoulder a portion of the costs involved in redeveloping a Brownfield property. Thus, the concept of risk/reward comes into play. Private developers do not have direct access to EPA grants. Instead, they rely on a variety of state and local governmental incentives such as tax increment financing and tax credits. These mechanisms can conflict with the interests and wants of local governmental entities. Local governments like development but in the ideal world, they would like to see development come at minimal cost to them. Developers in turn, like to lighten their load by spreading development costs to governmental agencies via any mechanism available.

The number of developers willing to pursue a project at this stage of economic upheaval is small. For developers, it's theoretically a buyers market. However, many developers are now without access to sufficient capital or financing. In a slowing economy, the cost of money is going up and financial incentives offered by governments are more attractive than ever.

Even qualified developers are looking for incentive packages that maximize their bottom line. The emphasis is on the word "package." The days of a project of any significance being completed with just one incentive are over. Most projects utilize a variety of incentives. The redevelopment of the Book Cadillac Hotel in Detroit was rumored to have utilized over 23 different incentive programs. The Rowe Loft project on Saginaw Street used at least 5 different sources of money.

Many projects are not tied to a specific area. Manufacturers involved in production of components to feed Michigan's growing Green economy would seem to fall into this category. This places a developer (or Green Manufacturer) in a position to play one municipality against another to see who will offer the best package of incentives. In a global economy, not only do developers play one city against another, they may also play one state against another and possibly even one country against another. Thus it becomes critical for the host community to know what weapons are in its arsenal to attract a given project.

The first tool any municipality should consider to maximize its use of a Brownfield program is to compile a database of Eligible Properties.<sup>18</sup> More than half of the respondents to a survey conducted by the MDEQ on utilization of their Brownfield programs maintained such a database.<sup>19</sup> Most of the properties contained in those databases were sites with unidentified contamination.

---

<sup>18</sup> "Industrial Decline and Opportunities and Challenges of Brownfield Redevelopment," Michael Greenberg, Henry Mayer, Karen Lowrie and Judith Shaw, *Community Investments*, Vol. 20, No. 2. The authors highly recommend an accurate site inventory of potential sites. The caution that there are no shortcuts to establishing such an inventory.

<sup>19</sup> "Draft Brownfield Redevelopment Authority Survey," Michigan Department of Environmental Quality, 2007.



Figure 3: Environmental Site Assessment<sup>20</sup>

Brownfield programs have been criticized in the past for focusing too much on contamination issues without consideration of how a given property fits into the overall needs of a project. Developers face a host of issues in selecting the proper site for a development. They include physical infrastructure, proximity to suppliers, political environment, real estate costs, the presence of a highly educated workforce and proximity to transportation routes. A database of Eligible Properties should include this information. Identification of the negative factors associated with a given property early on in the process will allow the City to tailor incentives to negate their impact.

Along with the database of Eligible Properties, there should also be an up to date database of federal, state and local incentives that might make redeveloping those sites more attractive. Unfortunately, these programs change quickly. Due in part to the economic condition of its residents, the City can offer a variety of incentives. This database should include information on what programs are complimentary with other incentive programs. Many projects die in their infancy because the developer does not have access to working capital. Tax Increment Financing or tax credits do nothing initially to overcome this void. Identification of complimentary incentives that provide access to sources of working capital at the onset of a project would assist in helping many projects get off the ground that would have otherwise failed.

The adage “time is money” is particularly true in the development of property. Brownfield projects require more time to complete. More administrative filings are required. Environmental

---

<sup>20</sup> Courtesy of Acadia Environmental, LLC, North Branch, Michigan.

investigations and cleanups can be lengthy processes. The presence of contamination will add significant time and cost to any project. To a developer evaluating potential incentives from more than one potential host community, the time it takes for a potential host community to come to agreement on incentives is critical. Assuming a suitable incentive package is quickly forthcoming, a developer may not wish to wait and see if potential packages from other potential host communities contain more lucrative terms.

The City of Flint Brownfield program is currently decentralized across different departments. A study conducted by the Michigan State Institute for Public Policy and Social Research noted that communities with very successful Brownfield programs typically have one person in charge. The authors observed that these projects can be complicated, take lots of time, require a great deal of trust between the stakeholders and will fall apart quickly if no one is riding herd at all times.<sup>21</sup> Response times would also improve if one Department was primarily responsible for taking the lead in administering the program. Open lines of communication between the various departments are vital for efficient administration of the Brownfield Program.

In some circumstances, a project may not be a compatible use with the surrounding neighborhood. One of the primary goals of any Brownfield program should be to consider strategic land-use planning objectives when siting a project. For example, Developers may not want to start a project if they are not satisfied that the remainder of the neighborhood will be developed. A piecemeal approach to siting Brownfield projects may not be successful. In its 2007 survey, the DEQ asked respondents whether they had a comprehensive strategy for Brownfield redevelopment. More than 2/3 of the respondents indicated that they either had a written strategy regarding development of Eligible Properties or were working on one. Creating such a plan appears to pay off as 70% of the Brownfield Redevelopment Authorities that had prepared such a plan reported over \$1,000,000 in property investments. Of those that did not have such a plan, only 35% reported having more than \$1,000,000 in private investments

A governmental unit contemplating Brownfield work may wish to consider ways to reduce the time it spends processing permits and applications to counter balance the time required to address contamination issues. For example, the County of San Bernardino in California created an array of incentives to promote the use of Renewable Energy Resources such as solar energy. These incentives include permit streamlining, priority field inspections and guaranteed timelines. Under its program, if a backlog of building inspections occurs, the County will give top priority to the inspections associated with green projects. It guarantees that any required inspection on a Green project will be performed on the next workday following receipt of an inspection request. If that can be pulled off with existing personnel, it can be delivered at minimal cost.

## **G. THE ROLE OF BROWNFIELDS IN A GREEN ECONOMY**

The 2009 MEDC Brownfield Program Guidelines are biased towards projects that promote a Green Economy. These guidelines incorporate a preference for buildings designed with sustainable features i.e. Green Buildings. The U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) Certification is the benchmark by which green buildings have come to be measured. Striving for a LEED certification improves a projects chance of receiving state Brownfield incentives.

---

<sup>21</sup> "Brownfield Redevelopment," Roger Hamlin, Ric Hula, Cynthia Elmoore-Jackson, Bianca Cobarzan and Christine Leuca, Urban Core Mayors and Bipartisan Urban Caucus Policy Briefing, October 30, 2007.

The MEDC also gives preference to projects that have a strong economic development rationale by furthering statewide industrial diversification goals. The State of Michigan is banking on Greening its economy and increasing the amount of green collar jobs. About 3% of all Michigan jobs can currently be considered “Green” but that amount has grown by almost 8% as the rest of the workforce has been contracting.<sup>22</sup>

A Green economy starts with Renewable Energy Resources. There are already over 70 companies in Michigan involved in manufacturing components for wind energy systems.<sup>23</sup> The number of jobs in this area will continue to increase. The City of Flint previously secured an award of \$200,000 from the EPA Brownfield Jobs Training Program. The EPA continues to offer these grants. The focus has shifted however to a curriculum that encourages job training in areas involving innovative and environmental sustainable technologies. Thus, the EPA is encouraging recipients to offer training in areas such as weatherization, Green Building Design, and installation and repair of systems utilizing Renewable Energy Resources. Many job-training programs are taking a similar approach.

Finally, Brownfields serve to reduce urban sprawl. They are the poster children for Smart Growth. Brownfields reduce pressure on Greenfields. They eliminate the need to build new roads, sewers and schools in freshly developed suburban areas. A former Mayor of Fort Wayne noted that “we recycle glass, paper and aluminum cans, but as a nation, we don’t fully recycle our land.”<sup>24</sup> Brownfields are the primary vehicle by which land is recycled. It would appear one could not get any Greener than that.

---

<sup>22</sup> “Green Jobs Proliferating-but so is the Competition to Snare Them,” Ron Dzwonkowski and Barbara Arrigo, Detroit Free Press, Sunday October 11, 2009, p. 27A

<sup>23</sup> State of Michigan website, November 4, 2009

<sup>24</sup> Brownfield, The United States Conference of Mayors, 2008.

# EXHIBIT ONE

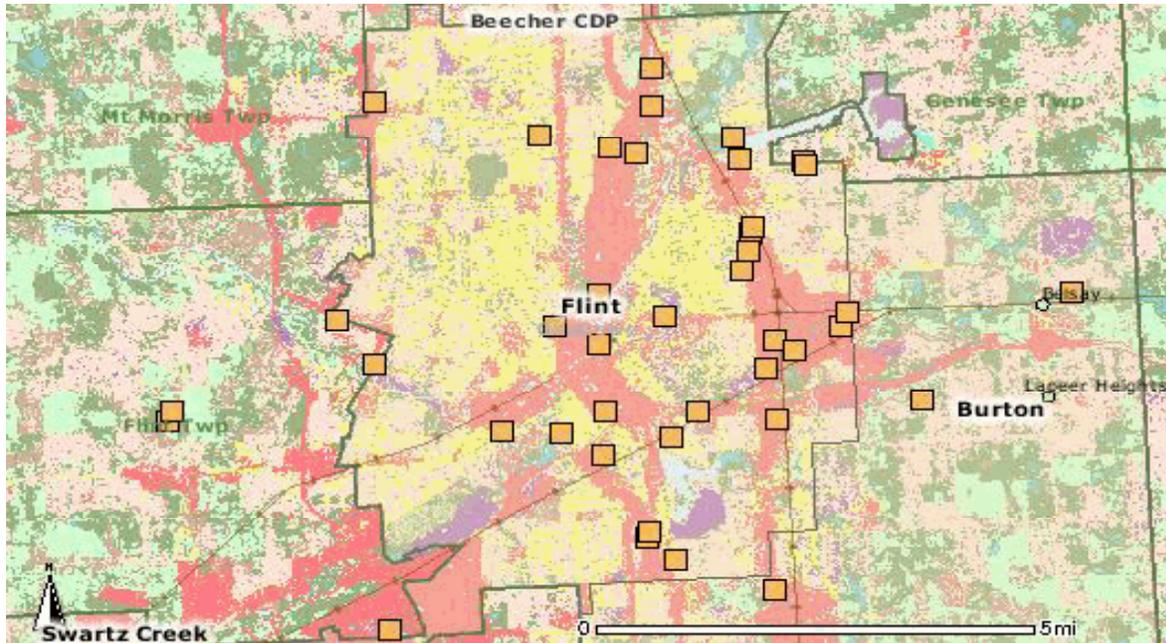
PART 201 SITES LOCATED IN THE CITY OF FLINT



# DEQ Environmental Mapper

## Department of Environmental Quality

11/4/2009



Disclaimers: The information is based in part on forms provided to the Michigan Department of Environmental Quality (MDEQ) by the owner and/or his/her consultant. The information may not be reflective of actual site and tank data due to various reasons, such as the owner's failure to report changes, an error in reporting ownership changes, and data entry errors. The locations on the maps have been identified by address matching and the use of global positioning system (GPS) instruments. The MDEQ does not make any representations regarding the accuracy of the information nor does it accept any responsibility for errors or omissions contained therein.

Provided By: Center for Geographic Information - Department of Information Technology

# EXHIBIT TWO

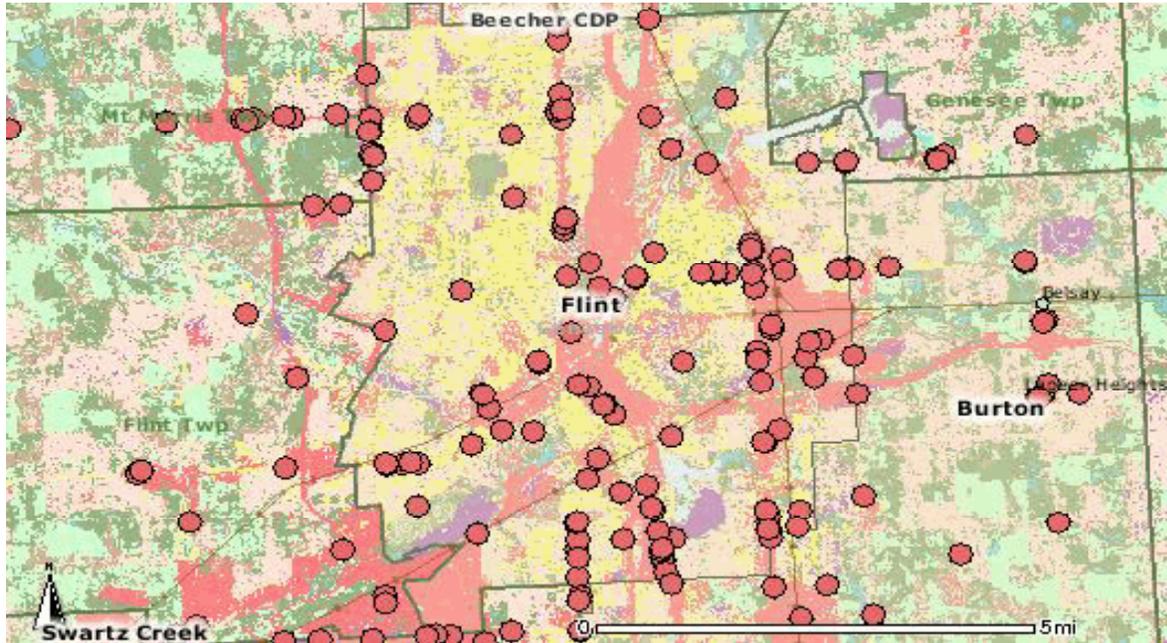
LUST SITES LOCATED IN THE CITY OF FLINT



# DEQ Environmental Mapper

Department of Environmental Quality

11/4/2009



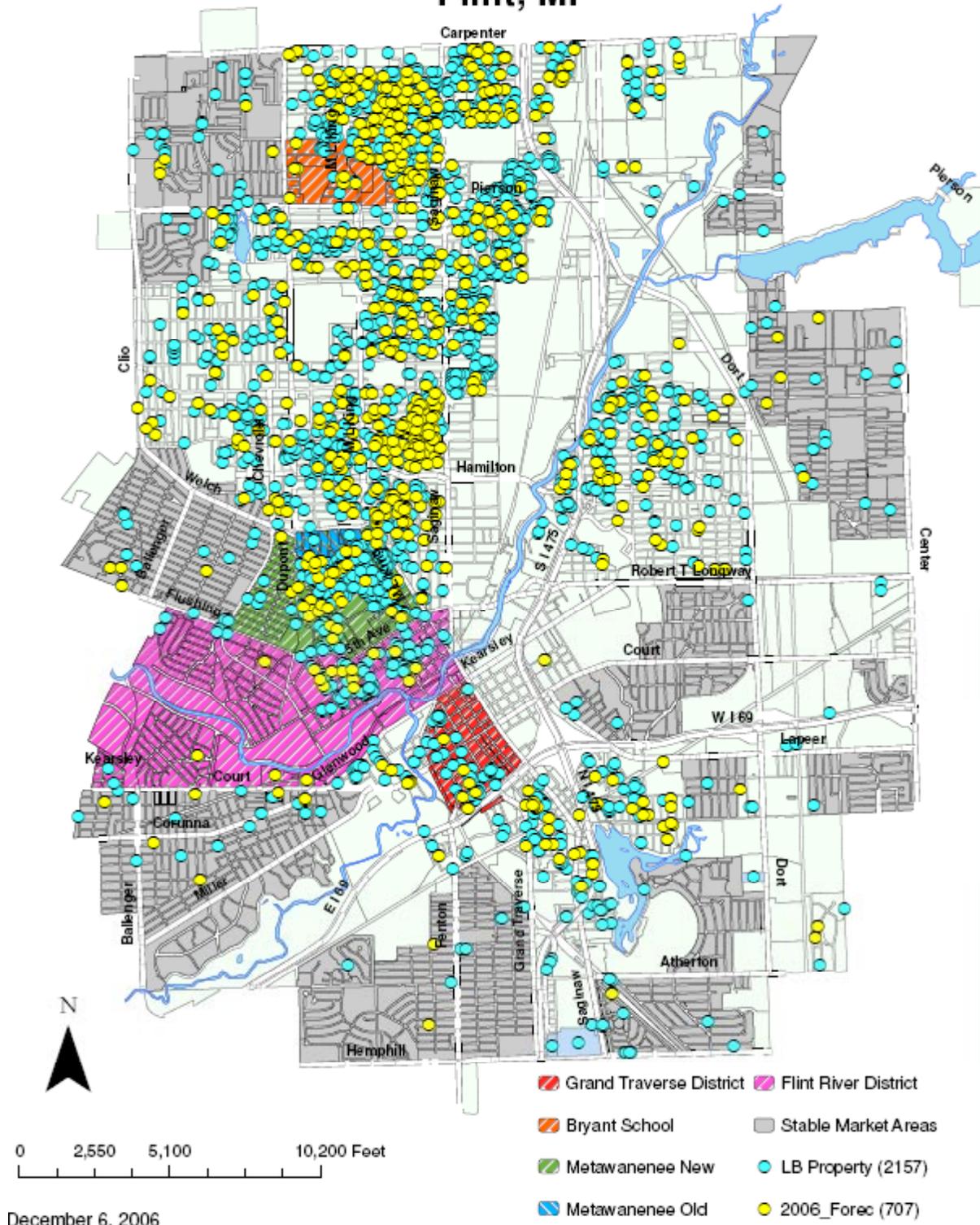
Disclaimers: The information is based in part on forms provided to the Michigan Department of Environmental Quality (MDEQ) by the owner and/or his/her consultant. The information may not be reflective of actual site and tank data due to various reasons, such as the owner's failure to report changes, an error in reporting ownership changes, and data entry errors. The locations on the maps have been identified by address matching and the use of global positioning system (GPS) instruments. The MDEQ does not make any representations regarding the accuracy of the information nor does it accept any responsibility for errors or omissions contained therein.

Provided By: Center for Geographic Information - Department of Information Technology

# EXHIBIT THREE

PROPERTIES CONTROLLED OR OWNED BY THE GENESEE  
COUNTY LAND BANK AUTHORITY

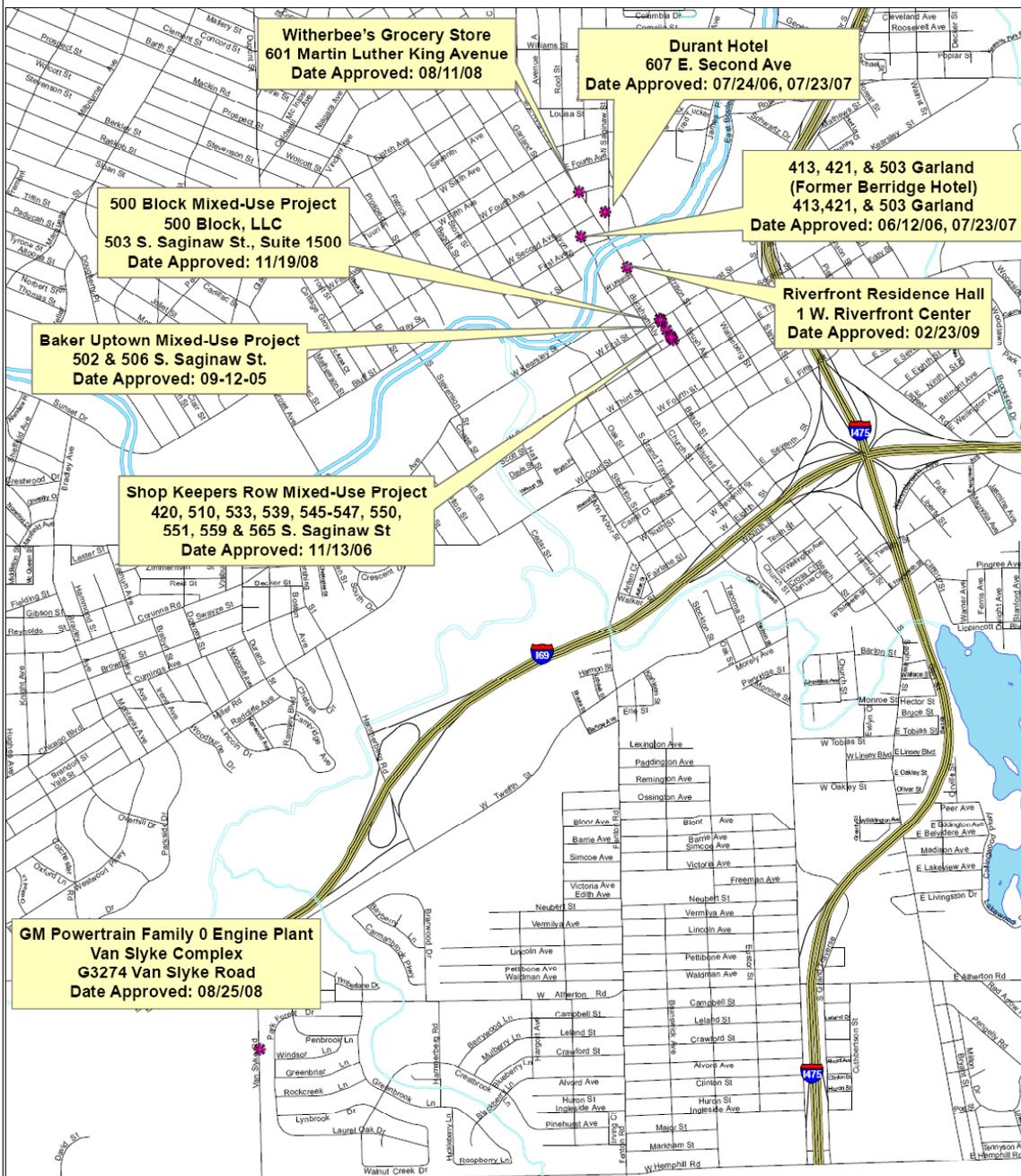
# Genesee County Land Bank Properties Flint, MI



# EXHIBIT FOUR

APPROVED BROWNFIELD PROJECTS

# City of Flint Approved Brownsfield Plans



\* Approved Brownsfield Plans



# ATTACHMENT

RESUME OF KEVIN A. LAVALLE

## **KEVIN A. LAVALLE**

---

### **EDUCATION**

University of Michigan (B.S., 1980)

Illinois Institute of Technology (M.S. in Environmental Engineering, 1983)

Detroit College of Law (J.D., *magna cum laude*, 1988)

### **WORK EXPERIENCE**

1990- Present. Gault Davison P.C.

### **PROFESSIONAL MEMBERSHIPS**

Genesee County Bar Association

State Bar of Michigan (Sections: Environmental Law and Real Property)

American Bar Association (Sections: Environment, Energy and Resources)

U.S. District Court – Western District of Michigan

U.S. District Court – Eastern District of Michigan

### **APPELLATE CASES**

*Attorney General ex rel. Department of Environmental Quality v. Richfield Iron Works, Inc.*, unpublished opinions per curiam of the Court of Appeals, issued Oct. 9, 2001 (Docket No. 219654 & 224318) [Scope of contribution protection afforded to PRPs entering into consent decrees with the State of Michigan].

*Farm Bureau Mutual Insurance Company of Michigan v. Porter & Heckman, Inc.*, 220 Mich. App. 627 (1996) [Seminal case of operator and arranger liability under the Michigan Environmental Response Act].

*Freeport-McMoran Resource Partners Ltd. Partnership v. B-B Paint Corp.*, 56 F.Supp.2d 823 (1999) [Level of proof necessary to support a contribution claim under the Comprehensive Environmental Response, Compensation, and Liability Act].

*Hicks Family Limited Partnership v. 1<sup>st</sup> National Bank of Howell*, unpublished opinion per curiam of the Court of Appeals, issued Oct. 3, 2006 (Docket No. 268400) [Elements necessary to assert a valid claim for cost recovery under Part 201 of NREPA].

*Hicks Family Limited Partnership v. 1<sup>st</sup> National Bank of Howell*, unpublished opinion per curiam of the Court of Appeals, issued July 15, 2008 (Docket No. 276575) [Plaintiff's status as a PRP does not preclude it from bringing a cost-recovery action under Part 201 of NREPA].

## **PUBLICATIONS**

- *Desulfobacter Biocatalyzed Reduction of Gypsum Wastes: Applications to Phosphoric Acid Manufacturing* M.S. Thesis, 1983.
- Co-Author: *Management of Industrial Pollutions by Anaerobic Processes*. United States Environmental Protection Agency, 1984.
- *Groundwater Contamination: Removal of the Constraints Barring Recovery for Increased Risk and Fear of Future Disease*. Detroit College of Law Review. Volume 1988 - Issue 1.
- *Federal and State Laws Which Impact on Groundwater Considerations at Solid Waste Disposal Facilities*. Great Lakes International Solid Waste Management Forum, March 1991.
- *Underground Storage Tank Update*. Genesee County Bar Association Bar Beat, July 1991.
- *Use of Baseline Environmental Assessment to Avoid Cleanup Liability*. 2005.

## **ACTIVITIES**

- Detroit College of Law Review - 1986 to 1988.
- Commentator for the following ICLE programs:
  - Representing Owners and Operators Under Act 307;*
  - The New Michigan Environmental Cleanup Legislation: Liability, Remediation and Real Estate Transfers;* and *Baseline Environmental Assessments: BEA's from A to Z.*
- AYSO soccer coach