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Controversial DTSC Vapor Intrusion Policy May Impede Development

The California Department of Toxic Substances Control ("DTSC") is seeking comments on its revised "[Vapor Intrusion Mitigation Advisory](#)" ("DTSC Advisory") which

The information in this alert affects Brownfield developers.

emphasizes remediation over engineering controls at sites with soil or groundwater contaminated with volatile organic chemicals ("VOCs"). Comments are due by October 31, 2009. VOC vapors originating from contaminated soil or groundwater can migrate into buildings. In recent years, regulatory agencies have been concerned about potential exposure to VOCs to building occupants. The DTSC Advisory applies to existing buildings as well as new construction.

Source remediation and engineering controls are the two basic approaches to address vapor intrusion. Examples of source remediation include soil excavation, soil vapor extraction, and groundwater treatment. Engineering controls include sealing cracks, adjusting building ventilation, installing vapor barriers, sub-slab venting, and increasing ventilation. Source remediation can be effective with localized contamination but generally not where groundwater contamination is widespread in area. In addition, source remediation is typically more expensive than implementing engineering controls. Brownfield developers have expressed fear that DTSC's emphasis on more costly remediation could increase cost with no significant benefit to human health or the environment.

The DTSC Advisory prescribes a risk-based approach which requires both source remediation and engineering controls for sites that exceed specified risk and hazard thresholds. Risk assessment models typically use conservative estimates assuming, for example, that an employee is present at the worksite for 50 weeks each year for 25 years. The Center for Creative Land Recycling ("CCLR") contends the threshold risk and hazard levels used in the DTSC Advisory are arbitrary and lack any scientific basis. CCLR points out that engineering controls have been proven to be equally protective of human health and can be sufficient in many circumstances. Because increased costs affect the viability of brownfield projects, the CCLR concludes that the DTSC Advisory "can pose a major hurdle to the safe reuse of brownfield sites in . . . inner-city communities."

While the DTSC Advisory is not binding, it will likely influence staff at DTSC and other agencies, perhaps even agencies outside California, and result in additional costs and time delays for many real estate development projects. Environmental groups are seeking even stricter cleanup and mitigation standards.

We would be pleased to assist in preparing comments to DTSC on its Advisory.

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