

Client Alert

Tort & Environmental Practice Group

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EPA Issues Long-Delayed Guidance for Assessing and Mitigating Vapor Intrusion Risks at Contaminated Sites

On June 11, 2015, the United States Environmental Protection Agency released long-delayed final guidance for evaluating and mitigating risks at sites where vapor intrusion is an actual or potential concern.¹ The final guidance applies broadly and will need to be considered at any site being evaluated by EPA under a CERCLA or RCRA corrective action, by EPA brownfield grantees, or by state agencies acting pursuant to a CERCLA or RCRA corrective action program.

Vapor intrusion refers to the migration of potentially hazardous vapors from subsurface vapor sources, such as contaminated soil or groundwater, through the soil and into an overlying building or structure. Vapor intrusion has been an area of increasing focus by EPA and state regulators since 2002, when EPA first issued draft guidance on the subject. EPA's final guidance represents the culmination of a controversial, decade-long effort to establish national standards for the evaluation and mitigation of this exposure pathway.

EPA's final guidance consists of two separate technical guidance documents. One document, entitled *OSWER Technical Guide for Assessing and Mitigating the Vapor Intrusion Pathway from Subsurface Vapor Sources to Indoor Air*, applies to all sites under evaluation and a broad range of potential contaminants, including chlorinated solvents such as tetrachloroethene (PCE), trichloroethylene (TCE) and 1,1,1-trichloroethane (TCA). A second document, entitled *Technical Guide for Addressing Petroleum Vapor Intrusion at Leaking Underground Storage Tank Sites*, establishes special procedures to address the release of petroleum hydrocarbons at from underground storage tanks (USTs). EPA states that this guidance should not be used at sites that, in EPA's view, are not comparable to UST sites, such as refineries, petrochemical plants, terminals, aboveground storage tank farms, and pipelines, or sites where petroleum hydrocarbons are comingled with other contaminants.

In general, EPA's final guidance establishes a two-tiered process for assessing vapor intrusion risks: a preliminary analysis that, according to EPA, should rely on available and easily ascertainable information to establish an initial understanding of potential vapor intrusion risks at the site; and a detailed investigation recommended when the earlier analysis

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shows vapor-forming chemicals may be present due to subsurface contamination. In addition, EPA identifies certain situations requiring “prompt action” to “determine whether urgent intervention is warranted to eliminate, avoid, reduce, or otherwise address a human health hazard.” These include the presence of “chemical,” “solvent,” or “gasoline” odors, reported physiological effects, and water intrusion into building basements in areas with known groundwater contamination.

Notably, the final guidance asserts “broad” and “distinct” EPA authority to protect workers from harmful vapor intrusion exposures, going far beyond the standards established by the Occupational Safety and Health Administration's (OSHA) and advising against using OSHA's Permissible Exposure Limits (PELs) to protect workers from vapor intrusion.

By establishing a final framework for assessing and mitigating vapor intrusion at contaminated sites, the final guidance will likely result in an even greater emphasis on potential vapor intrusion exposure, increasing both the cost of ongoing and future remedial actions as well as due diligence costs associated with purchase, sale, and leasing of real property. In addition, the final guidance is likely to be used by individuals claiming wrongful exposure to harmful vapors at both residential and non-residential sites, including the workplace. Finally, parties can expect additional action by state-level regulators, many of which have been awaiting final vapor intrusion guidance from EPA or issued their own guidance that will need to be reevaluated in light of EPA's action.

King & Spalding has significant experience with the evaluation and remediation of contaminated sites under CERCLA and RCRA, the evaluation of sites in connection with real estate transactions, and the defense of actions claiming exposure to toxic substances. If you have any questions about how this new guidance may affect you and your business, please contact Adam Sowatzka or Jim Vines.

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¹ EPA's final guidance is available for download at www.epa.gov/oswer/vaporintrusion/