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November 2, 2004

Records Access Office  
New York State Department of Health  
Corning Tower Room 2348  
Albany, NY 12237-0044

VIA FAX: 518-486-9144

Re: Freedom of Information Law (FOIL) Request for Access to  
DOH Guidance on Vapor Intrusion

To Whom It May Concern:

Pursuant to the New York State Freedom of Information Law, as amended (FOIL), this is to respectfully request copies of all NYS Department of Health (DOH) records kept, held, filed, produced or reproduced by, with, or for the department in any physical form—but especially paper documents produced by the Department—that set forth and/or explain the derivation, development and/or application of guidelines or guidance defining “safe” or “unsafe” levels in indoor air of chlorinated solvents (such as trichloroethylene and tetrachloroethene) and other VOCs. I am interested in particular in documents that bear on how VOC levels in soil or groundwater, or in soil vapors, are related to presumed levels in indoor air, and in how any DOH guidance differentiates between vapor intrusion into residences (which may be occupied by both adults and children 24 hours a day, 7 days a week for a lifetime) and commercial and industrial buildings (which are occupied both less intensively and for much shorter durations, and which may be exclusively frequented by adults). I am also interested in any written explanations or justifications for the use of different vapor intrusion guidance at the IBM Endicott and the Hillcrest “sites,” which are within a few miles of one another. I am requesting all such records, whether in draft or final form, that affect the public because they are being utilized and applied in the design of investigation and/or remediation requirements under the BCP.

Among the specific documents I would like to obtain copies of is the following:

- October 31, 2003 letter from Nancy Kim, Director of the DOH Division of Environmental Health Assessment to Dale Desnoyers, Director of the DEC Division of Environmental Remediation (setting forth the basis for the 5 ug/m<sup>3</sup> health guideline for TCE in indoor air)

I already have in hand copies of the following documents obtained from the DOH website (which, are, therefore, outside the scope of this request):

- Tetrachloroethene (PERC) in Indoor and Outdoor Air  
([http://www.health.state.ny.us/nysdoh/environ/btsa/fs\\_perc.htm](http://www.health.state.ny.us/nysdoh/environ/btsa/fs_perc.htm))
- “Ventilation system minimizes exposure in buildings affected by soil gas,” DOH Center for Environmental Health (April 2003)

This FOIL request comes at this time because of the Assembly ENCON Committee's plan to hold a field hearing in Endicott on November 15<sup>th</sup> on "Vaporization of contamination from soil and groundwater into indoor air." I plan to attend (and possibly testify at) this public hearing.

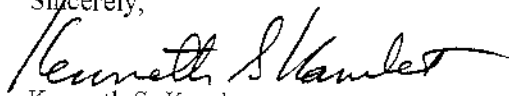
As the former Chair and founder of the Broome County Environmental Management Council's Brownfields Committee, as Co-Chair of the Legislative and Policy Committee of the National Brownfield Association's New York State Chapter (and as a member of the Chapter's Executive Team), and as the creator and administrator of a New York Brownfields website ([www.ny-brownfields.com](http://www.ny-brownfields.com)), I have a strong interest in State policies governing the regulation and management of Volatile Organic Compounds (VOCs) in soil and groundwater (including associated vapor intrusion) under DEC's Brownfield Cleanup Program (BCP). In addition, my firm, Newman Development Group, LLC, has been directly involved in the cleanup and redevelopment of 7 or 8 brownfield sites in the Greater Binghamton area—including the former Endicott Johnson Ranger Paracord site in Johnson City, a portion of which will be developed by the Gannett Corporation as a \$50 million regional printing press facility. (A sub-slab soil vapor management system is being required for the Gannett facility based on a soil vapor measurement for TCA of 130 ug/m<sup>3</sup> at a single sampling point.) (We were also involved in the cleanup and redevelopment of the former Chenango Plaza site under DEC's Voluntary Cleanup Program. A vapor barrier and a soil vapor extraction system were required for that project because of PERC-contaminated soils.)

Finally, I have been assisting a Syracuse-based entrepreneur in commercializing an environmentally-friendly innovative technology, which may be effective in suppressing the volatilization of subsurface chlorinated solvents (and other VOCs). From this standpoint, it is important that Soil Cleanup Objectives that are developed to address vapor intrusion preserve the flexibility to allow the use of alternative means of accomplishing the desired end-result—i.e., that they be performance-based, rather than specifying absolute numeric thresholds on a "command-and-control" basis.

This FOIL request is based on the fact that the DEC Division of Environmental Remediation website refers users interested in vapor intrusion guidance to a U.S. EPA website, and the DOH website contains no readily-retrievable information on the subject (other than site-specific information on ongoing health-effects studies related to the IBM Endicott Spill). If environmental cleanups under the BCP will continue to be governed by DOH health guidance where VOCs are present and the potential for vapor intrusion exists, both the regulated community (property owners, developers, prospective purchasers) and the public deserve to know what the guidance is, how it was developed, and how it will be applied.

If you have any questions, or require any clarifications, concerning this request, please do not hesitate to contact me. My telephone number is 607-770-0155, ext. 229; fax is 607-770-3482; and e-mail is [kkamlet@hotmail.com](mailto:kkamlet@hotmail.com). Thank you for your assistance.

Sincerely,



Kenneth S. Kamlet  
Director of Legal Affairs

cc: Geoffrey Laccetti – via e-mail: [GJL02@health.state.ny.us](mailto:GJL02@health.state.ny.us)  
Ron Brink (Broome County DOH) – via e-mail: [rbrink@co.broome.ny.us](mailto:rbrink@co.broome.ny.us)