

## *On the Cutting Edge: An Insider's Perspective*

### **Vapor Intrusion Policy May Have Big Impact on New York Brownfields**

**N**ew York's draft vapor intrusion policy document may have "potentially counterproductive implications" for brownfields redevelopment in the state, an attorney told BNA Dec. 2.

"There is a potential negative impact where volunteer developers do everything they are supposed to do, finish remediation and receive liability releases . . . and then two, five, or 10 years later DEC or DOH comes back saying vapor intrusion is a bigger concern, and now you need to jump through new hoops, at additional expense," according to Ken Kamlet, the director of legal affairs for the Newman Development Group LLC, a commercial property developer near Binghamton, N.Y.

The Department of Environmental Conservation's draft program policy, titled *Evaluating the Potential for Vapor Intrusion at Past, Current, and Future Sites*, was released Nov. 22 (see related story, this page).

"If incentives are critical to the success of the brownfields program in New York, the state must make a distinction between voluntary cleanup sites and sites cleaned up by potentially respon-

sible parties when it implements its vapor intrusion policy," he said.

For example, he said, under the brownfield program "volunteers" are treated differently than "participants." Because participants are responsible parties who caused the original problem, they must mitigate any offsite contamination and assist in resolving area-wide ground water contamination. Volunteers, however, are not subject to these offsite responsibilities and the state assumes the cost for such activities. Kamlet believes the state should adopt this same approach regarding vapor intrusion and pay for additional costs related to vapor intrusion at sites cleaned up by volunteers, whether under the state's brownfield or voluntary cleanup program.

"I hope the agency will be doing this on their dime rather than putting the cost on the owner/developer," he said.

Kamlet explained that although new sites will address vapor intrusion as part of the site investigation and cleanup, he is concerned the policy does not address how it will handle sites where cleanup is complete but redevelopment has not occurred. "Will DEC revisit such sites a second time after they

have been redeveloped?" he asked.

Kamlet also is troubled the policy's one-size-fits-all approach does not use "weighting factors" to differentiate among building types, such as those with and without basements, except for a footnote in the policy attachment "Soil Screening for CVOC [chlorinated volatile organic compound] Vapor Intrusion."

In addition, weighting factors to differentiate between residential and nonresidential structures are not mentioned in the policy document at all, Kamlet said.

The policy also does not take into consideration ground water flow and topographic gradients, Kamlet said, referring to a part of the policy that prioritizes sites with occupied buildings that are within 100 feet of ground water or soil contaminated with VOCs. "Certainly a site downgradient should have priority," he said. "The strict 100 feet threshold regardless of gradients seems questionable."

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*Kamlet can be reached at [kkamlet@hotmail.com](mailto:kkamlet@hotmail.com). An article regarding New York's vapor intrusion policy co-authored by Kamlet is forthcoming in the Guide.*

## Vapor Intrusion

### **DEC Releases Draft Indoor Air Policy Document**

**T**he New York State Department of Environmental Conservation issued a draft "program policy" document Nov. 22, *Evaluating the Potential for Vapor Intrusion at Past, Current, and Future Sites*. The document primarily addresses sites at which remedial decisions were made prior to 2003 where CVOCs are present, and suggests a process to prioritize such sites for further action.

According to the document, the initial priority screening criteria consider four conditions: total CVOCs concentration, depth to contamination, soil characteristics, and the land

use adjacent to the site above the impacted soil or ground water. A number of sites then will be targeted for further evaluation to determine whether a vapor intrusion problem exists.

Priority will be given to sites where soil gas contamination is found within 100 feet of an "existing occupied structure or one that is planned," or where ground water within 100 feet of or beneath an occupied building is contaminated with VOCs.

The document was released only a week after the state held a hearing on the issue in Endicott, N.Y., that was convened by the state Assembly Environmental Conservation Committee Nov. 15. At that meeting, Carl Johnson, deputy commissioner for air and

waste management, spoke of the forthcoming policy document.

"A prioritization approach has been developed to focus efforts on evaluating legacy sites with the greatest potential for vapor intrusion first," Johnson said. "The department is in the process of working through the universe of legacy sites now to identify the sites of concern."

Comments on the policy document are due by Dec. 24 and can be directed to Jim Harrington, Training and Technical Support Section, Division of Environmental Remediation, NYSDEC, 11th Floor, 625 Broadway, Albany, N.Y. 12233-7020.

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*The policy document is available at <http://www.dec.state.ny.us/website/der/vaporstrat.pdf> on the Web.*