

**OVERVIEW OF THE DOCKET OF COMMENTS ON
EPA'S EXTERNAL REVIEW DRAFT VAPOR INTRUSION GUIDANCE**

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I've just finished going through the Comment Docket for EPA's Final Vapor Intrusion Guidance. See <http://www.regulations.gov/#!docketDetail;D=EPA-HQ-RCRA-2002-0033>.

I skimmed most of the documents, ignored many of the detailed suggestions, and paid scant attention to comments on the Petroleum guidance alone. There are actually far fewer than the 177 comments counted in the docket. There are many redundancies, and the docket includes comments submitted before the April 2013 external review draft was circulated. Still, it's a lot of material.

Though it will delay finalization of the Guidance, I believe EPA was right to circulate the External Review draft for public comment. There are innumerable good questions and suggestions. If EPA has the resources to carefully consider each point, it will create a better final document.

Understandably, many commenters did not understand the concept of a "guidance." The document is intended to help EPA and other professionals make decisions, but they are expected to make site-specific judgments and apply new it emerges. The underlying statutes and regulations are enforceable. The guidance is just a guide.

While some industry commenters complained that the draft is long, there were many requests for further clarification. I expect that the Final Final version will be even longer.

Many commenters viewed the expected level of investigation to be burdensome, but some of those seemed that they would be more comfortable if EPA emphasized the flexibility of the requirements.

Some commenters would like to rely on soil-gas measurements to justify "no further action" decisions, without sampling indoors, while the state of Virginia recommended using soil gas sampling, instead of indoor air sampling, to predict "potential" vapor intrusion.

Numerous industry commentators asked EPA to defer workplace regulation to the Occupational Safety and Health Administration (OSHA), while others simply asked EPA to clarify when OSHA. Consultants (represented by Geosyntec's Todd McAlary) raised some important detailed questions, asking which regulatory framework applies to:

- "1) Office and administrative workers employed by the Responsible Party, if their job description does not include chemical handling.
- 2) Employees of companies other than the Responsible Party at a workplace adjacent to or downgradient of the release of volatile chemicals.
- 3) Self-employed individuals, such as a Sole Proprietor dry cleaning business.
- 4) Employees of the Responsible Party that handle chemicals and are trained to understand the potential inhalation risks, but are not currently working with the same chemicals that are present in the subsurface because of historic releases.
- 5) Workplaces where occupational air quality monitoring is not routinely performed."

On the other hand, California and Virginia regulators made strong cases for environmental regulatory agency jurisdiction at vapor intrusion sites.

IBM, responsible party in Endicott, New York, seemed to endorse the pre-emptive mitigation strategy employed there, but it warned: “we believe that to encourage such a conservative approach, requirements for operations and maintenance likely need to be moderated to limit cost and disruption for occupants.” Other commenters, such as Geosyntec and the State of Indiana, asked for more guidance on mitigation monitoring. I actually agree with IBM. To encourage putting more mitigation systems in place, I believe long-term monitoring should be streamlined. Perhaps we need more study to determine what is the optimum level of monitoring, because the likelihood of breakthrough may increase over time as new holes or cracks appear in concrete slabs or other barriers.

I also support Indiana’s call for Quality Assurance/Quality Control guidance for the use of mobile sampling devices, a technical approach that I supported in my comments.

Most commenters who mentioned risk communications or public involvement were supportive of EPA’s approach, but some expressed concern that the public notice would generate undue public alarm. The auto-plant redeveloping RACER trust actually questioned the value of public meetings, stating, “The practice of holding public meetings to fulfill a need to ‘inform’ the community can instead create a forum for inciting and exacerbating concerns that are better addressed with one on one meetings.” While I support one-on-one meetings, I strongly disagree. Often public concern goes beyond those buildings where sampling is scheduled, and in my experience ongoing working relationships among all the parties, including activists, leads to constructive meetings. Furthermore, public meetings are often needed to generate the political momentum to cause appropriate action. (Note that at EPA’s upcoming Community Involvement Conference – July 30, 2013 in Boston – I am working with EPA officials to organize role-playing exercises for one-on-one encounters and a public meeting at a generic vapor intrusion site.)

A number of industry commenters asked for an “off ramp.” That is, they want EPA to make clear how responsible parties can demonstrate that mitigation is no longer needed. Again, I support such a clarification, because it should make the polluters more willing to take early action. However, any such off ramp, should remain protective of public health.

Several commenters asked EPA to clarify how building occupants—particularly pregnant women—will be protected against short-term exposure to even low levels of TCE, which EPA believes increases the risk of cardiac birth defects. Some disagreed with EPA’s findings and expressed worry that such protection would lead to extensive building evacuations. Personally, I believe that EPA headquarters should resolve differences among EPA regions in the application of EPA’s IRIS assessment, but I don’t believe such a chemical-specific set of implementation standards belongs in the broader Vapor Intrusion Guidance.

Finally, though in the interest of time and focus I skipped most of the comments about the external review draft Petroleum Vapor Intrusion Guidance, I did notice that many industry commenters suggested that this Guidance apply to petroleum and manufactured gas plant sites beyond former gas stations. I don’t recall what reason EPA had for dividing up the universe of petroleum hydrocarbon sites, but it should either agree with the commenters or better define the difference.