

## WHO IS RESPONSIBLE?

Among the first things stakeholders affected by or concerned about vapor intrusion need to know is who is responsible for the releases of volatile substances into the subsurface.

Whether the release was the result of shoddy business practices, ignorance, the deliberate flaunting of environmental rules, or simply bad luck, the party that released the contamination is responsible for addressing it. Where another business has purchased a business that committed such a release, it becomes the responsible party. If someone buys the property but not the business, responsibility usually remains with the previous owner. Where the party cannot be identified, is out of business, or simply broke, the site may be called an **orphan site**.

Responsible parties (those that cause or contribute to pollution) are generally obliged to pay for environmental responses (investigation, mitigation, and remediation). This is true if the response is conducted by the responsible party, another business, or a government agency. At orphan sites, as well as some sites with identifiable polluters, government funds may be used for cleanup. For example, the Federal Superfund, now funded by Congressional appropriations, pays to clean up some of the nation's most contaminated sites where there are no viable responsible parties. Many states have similar programs. In addition, 13 states have funds, mostly collected from dry-cleaning businesses, which pay for environmental responses at dry-cleaning sites where releases have occurred. In addition, many states have Underground Storage Tank (UST) cleanup funds.

In many cases, government agencies or contractors acting on their behalf caused toxic releases. The federal Departments of Energy and Defense therefore have some of the largest cleanup programs in the world. The Defense Department, in particular, owns or formerly owned thousands of sites where chlorinated VOCs and petroleum hydrocarbons were used or released. In most cases, site cleanup, including vapor intrusion response, is funded through their budgets. Because federal polluting agencies carry out some of the site characterization and cleanup functions (that EPA conducts elsewhere) under oversight by EPA or state environmental regulatory agencies, it's common for these federal polluting agencies to challenge the authority, or at least specific decisions, made by EPA or state regulators

Where it appears that existing buildings might be experiencing vapor intrusion, it is usually the responsible party or an environmental agency that conducts the investigation and mitigation, such as installation and operation of an active depressurization system, if necessary. However, where the situation is considered urgent—a school or day care center, for example—the school district or facility operator may conduct mitigation, perhaps later seeking reimbursement from the responsible party. Where vapor exposures are believed to cause imminent danger, the school or business may actually be closed and evacuated.

### **Brownfields**

In reality, however, environmental cleanup or responses are often conducted and paid for by property owners and developers that acquire the property and follow steps defined in environmental laws. This is called the **brownfields model**. “A brownfield is a property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.” U.S. EPA and many states have

brownfields offices and programs. These provide grants, tax credits, and other assistance for property assessment, cleanup, and related job training.



**This New Jersey school quickly installed mitigation systems and then sought reimbursement from the neighboring polluter.**

But the key element of the brownfields model is that that investigation and cleanup are not conducted by the parties responsible for pollution or directly by a government program. While government programs may provide assistance, the developer expects to recoup its expenses out of the increased value of the property created by cleanup and redevelopment.

Typically, protection against vapor intrusion—mitigation in the form of vapor barriers, active depressurization, venting, etc.—is built into new construction, so the developer does the work and includes it in its construction budget. While the developer may or may not end up addressing some of the subsurface contamination on a property, in most cases it will end up taking responsibility for addressing vapor intrusion or removing potential exposure pathways and preventing a threat to the health of building occupants. This is normally the case even when remediation of the soil and groundwater is conducted by a responsible party or a government agency.

In addition, entities that develop property above plumes emanating from other properties frequently treat their projects as brownfields, addressing the vapor intrusion threat during construction. This can occur even where the source facility is subject to a regulatory program.

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