



# Vapor Intrusion May Be a Factor in Determining the Priority of Superfund Sites for Cleanup

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The EPA has recently proposed adding a subsurface intrusion component to its evaluation of contaminated sites for inclusion on the National Priorities List ("NPL"). See 40 C.F.R. 300. The EPA uses a Hazard Ranking System ("HRS") to assess soil, groundwater, surface water and air pollution at contaminated sites in order to identify those sites with the greatest potential to cause significant environmental harm. The sites identified are then listed on the NPL and receive priority as targets for remediation and potential funding under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). If the EPA's proposal is adopted, the HRS will add to its evaluation an analysis of the impact of subsurface intrusion, especially vapor intrusion, which could place sites on the NPL that would not have been listed previously. Comments on the EPA proposal are due by April 29, 2016.

Subsurface intrusion is the migration of hazardous substances from the groundwater to overlying structures. The most common form of subsurface intrusion is known as vapor intrusion, where hazardous substances volatilize and travel from the groundwater to the indoor air of structures overlying the contamination, sometimes resulting in unacceptable human exposure. The EPA felt that the threat from subsurface intrusion was not adequately addressed in the current HRS and, therefore, it is proposing to include a subsurface intrusion analysis as part of the HRS. Another factor in the EPA's decision is that state requirements for addressing subsurface intrusion are inconsistent and generally insufficient.

The EPA also noted that although vapor mitigation systems are being implemented at various sites, these systems do not eliminate the source of the intrusion. If the contamination causing the vapor problem is not eliminated, it could result in increased exposure to individuals due to the migration of such contamination and an expansion of its

area of impact. Moreover, vapor mitigation systems require maintenance and failures of these systems can and do occur. By placing sites on the NPL that have vapor intrusion issues, the contamination causing the vapor intrusion can be addressed instead of simply being mitigated. As such, the EPA felt the inclusion of a subsurface intrusion analysis in the HRS would allow sites posing a vapor risk to be prioritized for remediation and potential funding.

Although the EPA claims that the inclusion of a subsurface intrusion analysis will not increase the percentage of sites listed on the NPL, it will result in sites being included that would not have been listed in the past. Some believe this is a positive outcome given the potential public health threat that will be addressed by such listings. One thing that is clear from the proposed inclusion is that the impacts of vapor intrusion are gaining recognition on both the federal and state level and becoming a priority in the remediation of contamination sites.

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