

Vapor Intrusion Legal Issues

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Notable VI Litigation

- *Antolovich v. Brown Group Retail, Inc.* (2000 Co)
- *Ball v. Bayard Pump & Tank Co.* (PA 2007)
- *Defense Logistics Agency v. Pa* (EHB 2001)
- *New York State v. Exxon* (2007)
- *Nnadili v. Chevron* (DC 2006)

Notable Litigation Cont'd

- U.S. v. Apex (7th Cir 8/25/09)
- Grace Christian Fellowship v. KJG Investments (E.D. WI. 08/07/09)
- West Coast Home Builders v. Aventis Cropscience (N.D. Ca. 8/21/09)
- Aiken v. GE (NY App. Div. 2008)
- Rochester Technology Park (NY VCA)

Regulatory Review

- Bally Groundwater Site Removal AOC
- McAdoo Associates Site
- York County Solid Waste and Refuse Authority
Landfill
- Nyanza Chemical Waste Dump (Ashland, MA)
- Raymark Industries (Stratford, Ct)
- Kellogg-Deering Wellfield (Norwalk, Ct)

Liability for Vapor Intrusion

- CERCLA (RI, RD/RA, 5-YR Reviews)
- RCRA Corrective Action (EI/HE)
- UST
- State Remedial Programs
- Common Law
- Disclosure Laws

OFF-SITE MIGRATION

- Driving Listing and Re-opening Decisions
- Leading Cause of Litigation

OFF-SITE MIGRATION- Regulatory

- McAdoo Associates Site
- York County Solid Waste and Refuse Authority Landfill
- Behr Dayton Ohio

Off-Site Litigation

- Spear v. Chrysler LLC
- First Property Group, Ltd v. Behr Dayton Thermal Products LLC
- Martin v. Behr Dayton Thermal Products LLC
- Sher v. Raytheon

Environmental Quality Review Litigation

- Citizens for Upholding Zoning Regs v. City of Palo Alto
- Bronx Committee for Toxic Free Schools v. NYSCA

Primary Jurisdiction

- *Sher v. Raytheon*
- *Spear v. Chrysler*

Lease Liability

- Doherty v. Karten (NY) (reservation of re-entry)

CERCLA

- Exclusion for Releases:
 - Exposures to persons solely in workplace
 - for claims asserted against employer (workers compensation?)
- Facility- where hazardous substances come to rest
- Unilateral Administrative Orders
- Cost Recovery

CERCLA Continued

- Owner of Property
 - Equipment/Vessels
 - stormwater and sewer lines
- Operators-
 - tenants
- Generators-
 - franchisors/equipment manufacturers

CERCLA Continued

- Third Party Defense
 - Due Care Element
 - Precautionary Element
- ILO, BFPP and CPO
 - appropriate care

RCRA

- Corrective Action 3004 (u) and (v)
- Closure (TSDF and Generator)
- Section 3013 AO
- Section 7002
- Section 7003
- Section 3008(h)
- Sub-title I (USTs)

State Common Law

- Nuisance
- Trespass
- Strict Liability
- PI/PD
- Professional Malpractice
- Negligent Misrepresentation
- Breach of Contract (Lease, Sale)