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EPA Vapor Intrusion Rule Offers Little Help for Superfund Towns

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By *Sylvia Carignan*

The Environmental Protection Agency's new rule spotlighting vapor intrusion won't change the reality faced by frustrated residents of a contaminated New Jersey borough.

Pompton Lakes' toxic groundwater is the legacy of a shuttered DuPont munitions factory. A plume of those contaminants, including the carcinogens trichloroethylene (TCE) and

tetrachloroethylene (PCE), has caused a health risk by migrating from the ground into the indoor air of residents' homes.

“Our whole town is affected by it. Even though it’s only 400 homes, it puts our name in the spotlight in a bad way,” said Pompton Lakes Mayor Michael Serra.

In general, vapor intrusion can occur when groundwater or soil underneath a building is contaminated. Volatile chemicals migrate up through water and soil to contaminate air in buildings atop the groundwater plume.

That process can lead to fires and explosions as well as acute and chronic health effects, according to the Government Accountability Office.

The EPA issued a final rule (RIN:2050-AG67) earlier this month that inserts vapor intrusion into the system that prioritizes contaminated sites across the country for cleanup.

Sites can qualify for the EPA’s National Priorities List by earning a minimum score through the Superfund Hazard Ranking System. A higher score can indicate a more seriously contaminated site, and those ranking above 28.5 get added to the National Priorities List.

Before this rule, the Hazard Ranking System measured environmental contaminants through four channels: groundwater migration, surface water migration, soil exposure and air migration. The EPA’s [new rule](#) adds vapor intrusion as a fifth channel to the system.

In a 2010 report, the Government Accountability Office called on the EPA to assess contaminated sites for vapor intrusion.

“If these sites are not assessed and, if needed, listed on the NPL, some seriously contaminated hazardous waste sites with unacceptable human exposure may not otherwise be cleaned up,” the report said.

EPA regional officials started performing investigations for vapor intrusion in 2003, the agency told the GAO.

Making the List

There are currently 1,337 National Priorities List sites, with 53 more sites proposed. An average of 17 sites have been added to the National Priorities list each year since 2011.

The addition of vapor intrusion is not expected to create an onslaught of new sites for the National Priorities List, according to EPA and professionals in the remediation field.

Instead, sites currently in the pipeline will be reviewed and moved to a higher priority if vapor intrusion tests indicate they are higher-risk sites, according to the EPA.

Several residents of Pompton Lakes wrote public statements to the EPA earlier this year to ask that the agency add vapor intrusion to the Superfund ranking system, but as other commenters and Serra noted, that would have no effect on Pompton Lakes.

The town's contamination is being addressed with DuPont through the Resource Conservation and Recovery Act, not the Superfund law, formally known as the Comprehensive Environmental Response, Compensation and Liability Act.

Other public statements against the rule stated that the disproportionate number of Pompton Lakes-related comments may have tipped the scales, influencing the EPA to include vapor intrusion.

The Montana Department of Environmental Quality also commented on the draft rule. At some contaminated sites where groundwater is not being used as drinking water, the department wrote, the toxins are so deep that the only way for them to affect public health is through vapor intrusion.

The department was in favor of the rule.

“Adding subsurface intrusion to the HRS will allow the use of federal resources to protect human health when warranted,” the department wrote.

In other cases, where contaminants in groundwater aren't concentrated enough to exceed drinking water standards, they could still present a risk for vapor intrusion, said Larry Schnapf, chair of the Environmental Law section of the New York State Bar Association.

According to an EPA spokesperson, the agency only plans to take a second look at sites when new information becomes available or the circumstances of the site have changed. But, it is not agency policy to routinely re-score sites that do not make the list.

Schnapf said companies cleaning up existing sites are usually already thinking about the possibility of contamination by vapor intrusion.

“I don't think this development is going to alter existing sites because once a site is placed on the NPL, they have to do a remedial investigation, and that's going to include vapor intrusion,” he said.

About 20 states, including New Jersey, are proactively addressing vapor intrusion, said Laurent Levy, senior project manager in the Cambridge, Mass., office of the environmental consulting firm Gradient.

“In existing sites, I think it's often being discussed already,” he said.

Testing for Volatile Chemicals

The nature of vapor intrusion testing can slow the remediation process.

“It can be very lengthy, and it can be difficult to complete, because of the access to people's homes,” Schnapf said.

In addition, residents of those homes may not want a contractor or government agency on their property.

“People have an interesting reaction,” Schnapf said. “On the one hand, they’re very concerned about health and exposure of their children. On the other hand, they’re worried about property values.”

In some cases, contractors will place a passive volatile organic chemical collector in the basement of a building to pick up traces of contaminants. The passive collector acts much like flypaper, catching particles for later lab tests.

In Pompton Lakes, some residents agreed to allow DuPont to install vapor mitigation systems on their properties after their vapor intrusion issues arose around 2005. Others opted for independent contractors to install their systems.

The EPA rule and attention to vapor intrusion comes too late for Pompton Lakes.

“This all came about after we were situated. We’ve been dealing with this for many years,” Serra said.

Local Cleanup Efforts

At the local level, the classification of a site into the Superfund program or Brownfields program affects how vapor intrusion issues might be handled. According to the EPA, Brownfields sites generally do not present the same level of risk that a Superfund site does. The rule would have almost no impact on Brownfields.

For Brownfields sites, where a developer usually pays for cleanup, the construction of new buildings on the site will likely be regulated by their local planning department.

“Most local planning jurisdictions don’t have the knowledge, let alone the regulatory framework, to control vapor intrusion,” said Lenny Siegel, executive director of the Center for Public Environmental Oversight.

Contamination at Superfund sites may also contribute to groundwater plumes that flow under nearby communities, causing vapor intrusion issues in the buildings there.

“At the actual source area, the regulators may be more involved, but if there’s a groundwater plume that’s flowing under a neighborhood or a school or something, it may be that there’s less attention paid,” Siegel said.

In the San Gabriel Valley in Los Angeles, there are four designated Superfund sites. In one of them, which affects the town of Alhambra, the EPA is responsible for cleaning up water, but the local planning department is responsible for cleaning up contaminants in soil gas.

“No one is really looking at the potential for groundwater plumes from these sites that pose a risk of vapor intrusion in nearby neighborhoods,” Siegel said. “The water board, which is understaffed, is trying to address vapor intrusion on the source properties, but no one’s looking at vapor intrusion downgradient.”

The EPA rule won’t change that. If a Brownfields site is affected by vapors from contamination on or near the property, the Hazard Ranking System would not identify those issues.

“This is a matter of fragmentation of regulatory oversight,” Siegel said. “The cities don’t know how to deal with this.”

Realigning Federal Priorities

According to the EPA, the agency expects a “realignment and reprioritization of its internal resources and state cooperative agreement funding” to address vapor intrusion sites. The EPA will still need to develop a strategy to assess those sites while balancing the needs of other sites.

The agency estimates that about 10 percent of assessed sites will have contamination by vapor intrusion. If the findings of vapor intrusion testing reveal significant health threats, the rule could facilitate immediate removal action, the EPA said.

But overall, the rule is expected to have “no direct impact on human health risk,” according to the agency.

The rule will be effective after it is published in the Federal Register. A spokesperson for the EPA declined to provide an estimated publication date.

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For More Information

EPA's vapor intrusion rule is available here:
<https://semspub.epa.gov/work/HQ/190703.pdf>

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