

**OHIO EPA’S NEW GUIDANCE RAISES STAKES ON VAPOR INTRUSION**

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On August 24, Ohio EPA released new guidance that incorporates an unprecedented approach to vapor intrusion. Under the new guidance, [\*Recommendations Regarding Response Action Levels and Timeframes for Common Contaminants of Concern at Vapor Intrusion Sites in Ohio\*](#), the Agency is for the first time demanding immediate action when contaminant levels exceed certain established “trigger” levels. In the case of one particular contaminant – trichloroethylene (TCE) – the Agency expects action within days if the associated trigger levels are exceeded. The guidance, as outlined below, has major implications for businesses, property owners, consultants and attorneys.

The guidance establishes specific trigger levels for sub-slab and indoor air that if those levels are exceeded require immediate follow-up action. With regard to TCE, it establishes trigger levels for groundwater in addition to sub-slab and indoor air. Groundwater or sub-slab exceedances will require immediate indoor air sampling. If indoor air trigger levels are exceeded, immediate action is required in the form of installation of a remedy and/or notifying regulators. The response times for exceedance of indoor air trigger levels are set forth below.

**RESPONSE TIMES FOR COMMON INDOOR AIR CONTAMINANTS**

	<b>EXCEEDS INDOOR AIR RISK STANDARD</b>
<b>Chronic Response</b>	Resample or install remedy within 30-90 days
<b>Accelerated Response</b>	Coordinate with appropriate state, local and health authorities on response action

\* Common contaminants include: vinyl chloride, tetrachloroethylene, chloroform, carbon tetrachloride and naphthalene.

**RESPONSE TIMES SPECIFIC TO TCE**

	<b>EXCEEDS INDOOR AIR RISK STANDARD</b>
<b>Accelerated</b>	Early and interim response actions evaluated <b>within weeks</b>
<b>Urgent</b>	Response actions evaluated <b>within days</b> . Consider relocation of residents.
<b>Imminent</b>	<b>Immediately</b> contact state, local and public health officials. Relocate residents.

The Agency made the following public statement following its release of the new guidance:

The Division of Environmental Response and Revitalization (DERR) has developed a memorandum on action levels and response timeframes for sites that are being investigated for vapor intrusion of trichloroethylene (TCE) and other associated chemicals. These actions levels and time frames are based primarily upon the short term exposures to TCE and the potential for cardiac malformations in developing fetuses. DERR developed this guidance in consultation with USEPA and use these risk levels and response times when conducting Ohio EPA lead investigations for the CERCLA and RCRA programs. This guidance does not have the force of law, but Ohio EPA recommends its use to outside stake holders, including the Voluntary Action Program (VAP), in evaluating the concentrations of volatile compounds in ground water, soil gas or indoor air in residences and commercial buildings. (emphasis added)

What is unprecedented about this new guidance is the requirement to take immediate action, within days in some cases, based upon risk-based screening values. Historically, vapor intrusion risks were vetted through sampling and analysis, a process that could take a year or more before cleanup was implemented.

## GUIDANCE ON TCE

TCE is a very common metal degreaser. As set forth above, the response timeframes for exceedances of TCE trigger levels are particularly aggressive. Ohio EPA bases its urgent call to respond upon a specific evaluation of the risks of TCE exposure:

In September, 2011, [U.S. EPA] updated the toxicity assessment for TCE which concluded, in part, that women in the first trimester of pregnancy are one of the most sensitive populations to TCE inhalation exposure due to the potential for fetal cardiac malformations. Because the key steps for cardiac development occur within the first 8 to 10 weeks of pregnancy, exposure to TCE during early pregnancy is of concern.

To give some perspective as to the number of sites in Ohio that may have some level of TCE contamination, earlier this year, Massachusetts introduced a TCE initiative in which it announced it would review 1,000 closed cleanup sites across the state. Ohio, a much larger and more industrial state, likely could have more TCE impacted sites.

## IMPLICATIONS OF NEW VAPOR INTRUSION GUIDANCE

The guidance has major implications for businesses/property owners, consultants and attorneys:

- Property owners have increased liability risk, particularly if they are aware that trigger levels may be exceeded.
- Through guidance and training sessions, Ohio EPA has pressured consultants to come forward with data even in instances when their clients may not want the information to be public.
- It will be critical for attorneys to ensure that adequate evaluation of vapor intrusion is included in Phase I. While it is a requirement to evaluate vapor intrusion risks under the current Phase I standard (ASTM 1527-13), inconsistencies persist among consultants in evaluating vapor intrusion in their Phase I reports.
- Where Ohio EPA has data and wants further evaluation of vapor intrusion risks, the Agency is notifying property owners they must take action or the Agency will proceed with sampling.
- In early summer, Ohio EPA revoked portions of its prior vapor intrusion guidance that relied upon use of the Johnson & Ettinger model (a less conservative model than [U.S. EPA Vapor Intrusion Screening Level \(VISL\) Calculator](#)). Ohio EPA still has not been clear as to whether it will reopen previously closed cleanup sites that relied upon the Johnson & Ettinger model.
- While the guidance states it does not have the force of law, Ohio EPA is taking action based upon the new guidance.

## ADDITIONAL INFORMATION

For more information, please contact:

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