

Vapor Intrusion Rule Submitted for White House Review

SEPTEMBER 22, 2016

EPA's final rule for considering vapor intrusion as a contaminant pathway for placing a site on the National Priorities List (NPL) was submitted to the White House Office of Management & Budget for review on September 2, 2016.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) requires that the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) include a list of national priority sites among the known releases or threatened releases of hazardous substances, pollutants, or contaminants within the United States. This list is known as the National Priorities List, or NPL. EPA developed a the Hazard Ranking System (HRS) that is used to determine whether sites are placed on the NPL. The HRS currently evaluates four potential exposure pathways: ground water, surface water, air, and soil exposure. The new rule would add a subsurface intrusion (Ssl) component to the current soil exposure pathway.

The proposed rule was released in February 2016 and incited mixed responses. While some states and environmental advocates endorsed the rule, industry parties opposed the rule, as well as the Department of Defense (DOD), which stated, in part, that the rule "lacks transparency in some places, and the methods for prioritizing vapor intrusion are inconsistent with" vapor intrusion guidance documents issued by EPA. Critics also argue that the rule will not result in the addition of sites to the NPL that would not otherwise be listed because the contaminated source zones (groundwater, soil) are already evaluated under CERCLA, the Resource Conservation and Recovery Act (RCRA), and state programs. DOD concluded that EPA should delay promulgating the rule until guidance for its implementation is developed. We note, however, that EPA's action continues to heighten the focus on vapor intrusion as a pathway to human exposure and may result in many states revising their hazard ranking systems to expressly include the vapor pathway. It may also implicate a number of sites that have already received regulatory closure and now face potential "re-openers" for a vapor intrusion analysis.

EPA is looking to issue a final rule by the end of the year.

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