

ERR's Due Diligence At Dawn Seminar:

Why Vapor Intrusion Matters— An Environmental Attorney's Perspective

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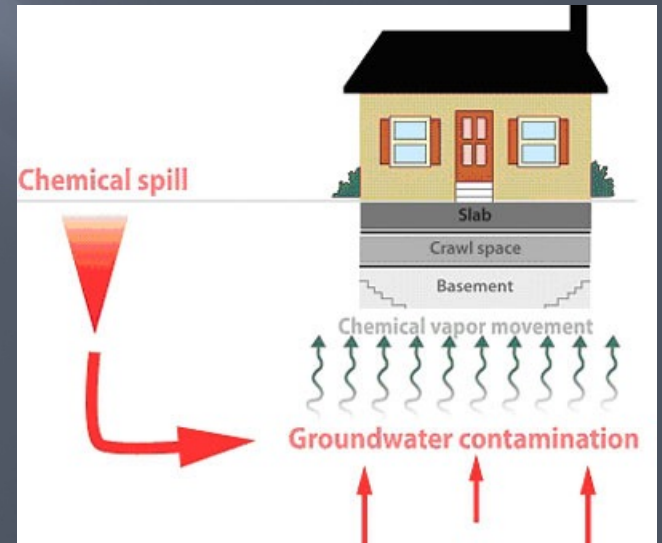
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Minneapolis, MN

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Outline – Why Vapor Intrusion Matters

- Minnesota VI Policies
- Impact of VI on Real Estate Deals
- Managing Risk
- VI Scenarios
- Liability Concerns



Vapor Intrusion Policies in Minnesota

LUST Sites

- Explosion Risk
- Off-site – Sewers/Basements
- Vapor Survey



VI Policies in Minnesota

Minnesota Follows National Trends

2002 EPA Studies

Concern on Sites with Solvent
Releases

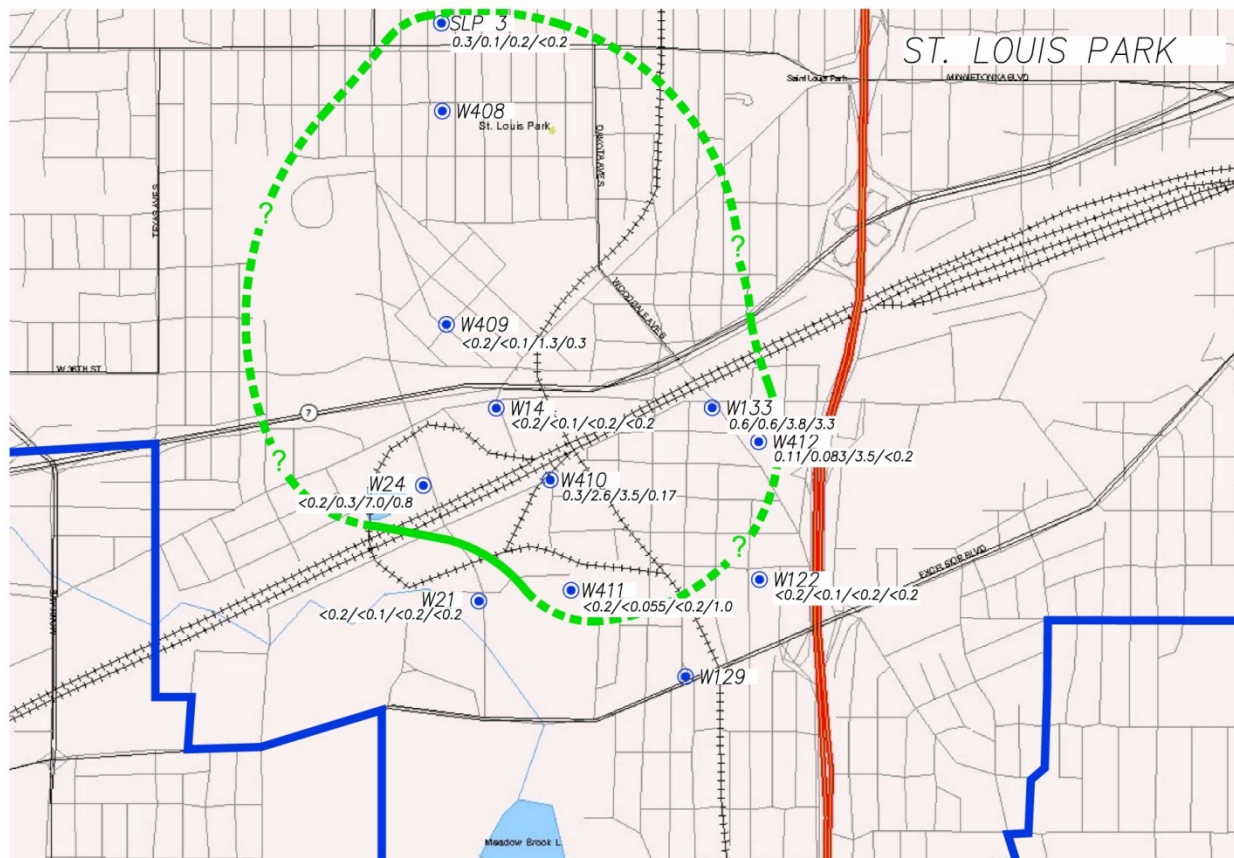
Highway 7 and Wooddale Avenue Area, St. Louis Park, MN



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ST. LOUIS PARK/ EDINA/ HOPKINS/ GROUNDWATER VOC STUDY- 2006/2007
DETECTED CHLORINATED SOLVENT CONCENTRATIONS IN GROUNDWATER
ST. PETER AQUIFER
EDINA / ST. LOUIS PARK / HOPKINS, MINNESOTA
FOR: MINNESOTA POLLUTION CONTROL AGENCY

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LEGEND

- WELL NAME (2007 RESULTS)
PCE/TCE/CIS-1,2-DCE/VINYL CHLORIDE CONCENTRATIONS (ug/L)
- WELL NAME (2004-2006 RESULTS)
PCE/TCE/CIS-1,2-DCE/VINYL CHLORIDE CONCENTRATIONS (ug/L)

— EXTENT OF THE CHLORINATED VOCs PLUME

--- UNKNOWN EXTENT OF THE CHLORINATED VOCs PLUME

NOTE: BASE MAP PROVIDED BY STS GIS.

VI Policies in Minnesota

2005: MPCA Guidance for Site Investigation

2008 and 2010: Guidance Updates and Screening Criteria Published

MPCA's Voluntary Investigation Cleanup Program and Petroleum Brownfields Program

Evaluation of vapor intrusion risk
now a prerequisite for liability
assurances

MPCA VI Guidance

- Identify Source of Contaminant Vapors
- Sampling for Contaminants in Soil Vapor
- If Soil Vapor Samples Exceed Screening Values, Conduct Building-specific Investigation

MPCA VI Guidance

- Sub-slab Investigation to Compare with Screening Criteria
- Consider Mitigation
- MPCA's Preferred Method: Sub-slab Depressurization

VI in Real Estate Deals

- Purchase and Sale of Property
- Lease of Property
- Refinancing of Property

Impact of VI on Real Estate Transactions

- More Work Required to Obtain Liability Assurances
- Past Assurances May Be Reopened
- Case-by-case Application of Guidance
- More Difficult to Reach Closure

Managing VI Risk

- Comprehensive Site Evaluation Required
- Educate Clients

Options to Minimize VI Pathways

- Complete Additional
Soil/Groundwater Cleanup
- Siting Considerations
- Design Solutions
- Vapor Barrier / Sub-slab
Depressurization

Vapor Intrusion Scenario

Sale of Vacant Office Warehouse

- Hennepin County
- Prior Cleanup: No Further Action
- Vapor Mitigation Required as Condition for No Association Determination

Vapor Intrusion Scenario

Sale of Manufacturing Facility

- Hennepin County
- Phase II by Lender
- Vapor Impacts
- Mitigation

Vapor Intrusion Scenario

Major Brownfield Redevelopment

- Ramsey County
- No Pending Transaction
- Office Warehouse
- Multi-tenant Building
- 1998 Certificate of Closure/Voluntary Response Action Agreement

Vapor Intrusion Scenario

Refinancing of Hotel Property

- Hennepin County
- Lender No Association Determination
- Phase II and Follow-up Testing
- Escrow Account


Reilly Tar VI Issue



Figure 1

Created by Sarah Backhouse
U.S. EPA Region 5 on 9/22/06
Image Date: 2003

Legend

 Reilly Tar and Chemical Corp.



Site



Cleanup and Tort Liability

Potential Claimants:

- Government
- Private Parties (Property Occupants, Tenants, Neighbors)

Standard of Care

ASTM's E2600 Vapor Intrusion Standard

EPA's Hazard Ranking Score:
Vapor Intrusion Element

All Appropriate Inquiry (AAI)

Cleanup and Tort Liability

Common Law

- Negligence, Negligence Per Se
- Trespass
- Nuisance, Nuisance Per Se
- Strict Liability

Cleanup and Tort Liability

Statutory

- CERCLA / MERLA
- Other Statutes

Cleanup and Tort Liability

Damages / Claims for Relief

- Compensatory Damages
- Diminution/Stigma
- Attorney's Fees
- Punitive Damages

Professional Liability

- Obligations of Professionals to Assess and Manage VI Risks
- *City of Eveleth v. Ruble*: “a duty to...exercise such care, skill and diligence in that profession ordinarily exercise under like circumstances.”

QUESTIONS?

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