

REGULATORY UPDATE: NYS DOH SOIL VAPOR INTRUSION GUIDANCE UPDATES - FEBRUARY 2024

In February 2024, the New York State Department of Health (DOH) updated its 2006 "[Guidance for Evaluating Soil Vapor Intrusion in the State of New York](#)" without providing advanced notice or an accompanying fact sheet. The update assigned 13 volatile petroleum compounds to three new [Soil Vapor/Indoor Air Decision Matrices](#). Prior to this update, only chlorinated aliphatic hydrocarbons were subject to the DOH Soil Vapor Intrusion (SVI) Guidance. The addition of petroleum compounds, which are ubiquitous in household and industrial products, may result in regulatory requirements for the installation of SVI mitigation systems on completed (remediated), current (underway), and future cleanup projects.

The DOH, in consultation with the New York State Department of Environmental Conservation (DEC), uses the 2006 Soil Vapor Intrusion Guidance and Soil Vapor/Indoor Air Decision Matrices to regulate SVI and mandate SVI mitigation in buildings throughout New York State. While the DOH Soil Vapor Intrusion Guidance is "not a regulation, rule, or requirement," compliance is typically mandated for sites regulated under 6 NYCRR Part 375 Environmental Remediation Programs (i.e., the state Superfund, Brownfield Cleanup and Environmental Restoration Programs) and those regulated by the New York City Office of Environmental Remediation (OER).

WHY IS THIS SIGNIFICANT?

The update may prompt a mandate for SVI mitigation for projects with petroleum releases that are subject to DEC/DOH oversight (including petroleum spill sites). This may also extend to projects in New York City that are subject to OER jurisdiction (e.g., E-Designation and Voluntary Cleanup Program sites), as the OER typically applies NYS guidance to projects under its purview.

WHAT ARE THE CHALLENGES PROMPTED BY THIS UPDATE?

While the update went into effect in February 2024, there is still uncertainty about how it will be applied. It remains to be seen if the remedies for on-going petroleum cleanups will need to be revisited, and if the update will trigger a reopener provision for closed sites with residual petroleum impacts. Further, because petroleum products are likely to be identified as potential confounding sources in indoor air during SVI sampling, data evaluation and interpretation will be complicated.

HOW WILL THIS IMPACT YOUR PROJECT?

If you own, operate, and/or plan to purchase and develop a site with petroleum impacts and that is subject to DEC and/or OER jurisdiction, you may need to mitigate SVI. Additionally, if the potential presence of petroleum products is identified during the preparation of a Phase I Environmental Site Assessment, it may be necessary to take additional steps to evaluate human health risk for the occupied site in order to demonstrate due care under CERCLA.

To discuss this matter and how it may impact your projects, please contact your Langan Project Manager or:



Mimi Raygorodetsky
Principal
mraygorodetsky@langan.com
212.479.5441



Gerry Nicholls, PE, CHMM
Associate Principal
gnicholls@langan.com
212.479.5559

Technical Excellence. Practical Experience. Client Responsiveness.

