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IEA Annual Symposium

VI Legal Updates

David Gillay
October 27, 2025
General Session

Overview

- VI Pathway
- Relative risk (chemical VI + radon)
- Legal Liability update (chemical VI + radon)
- Considerations
- Recommendations

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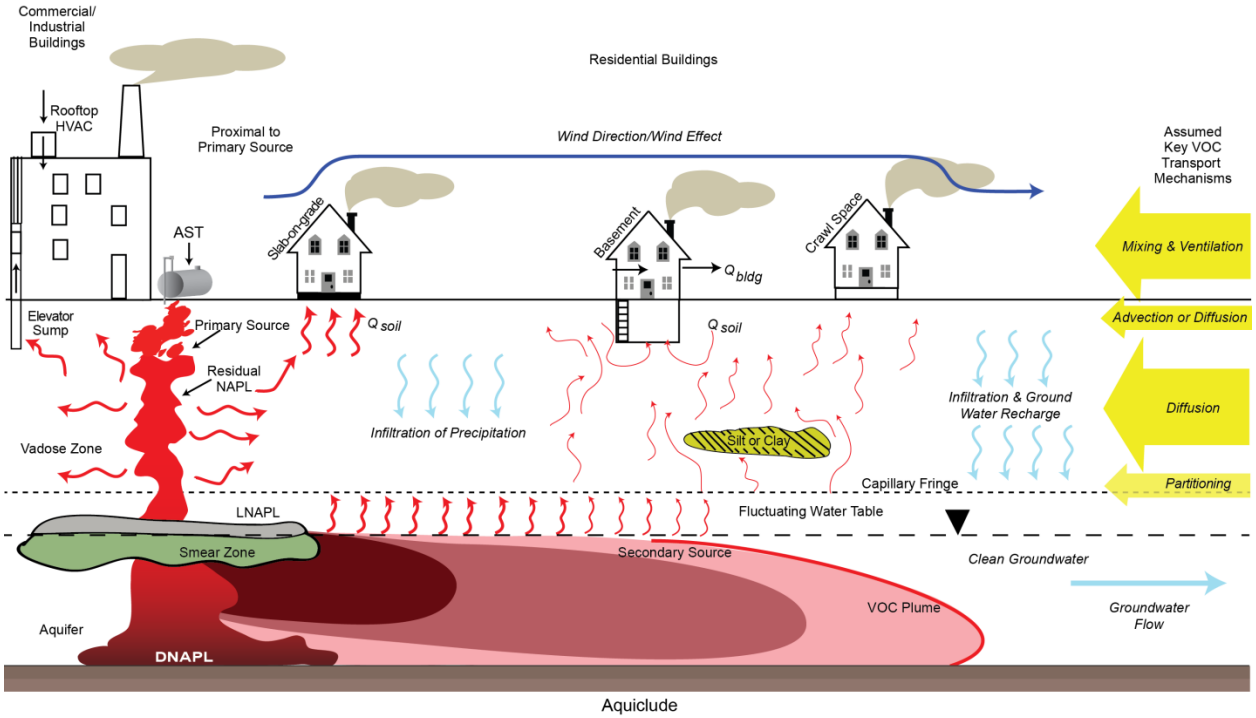
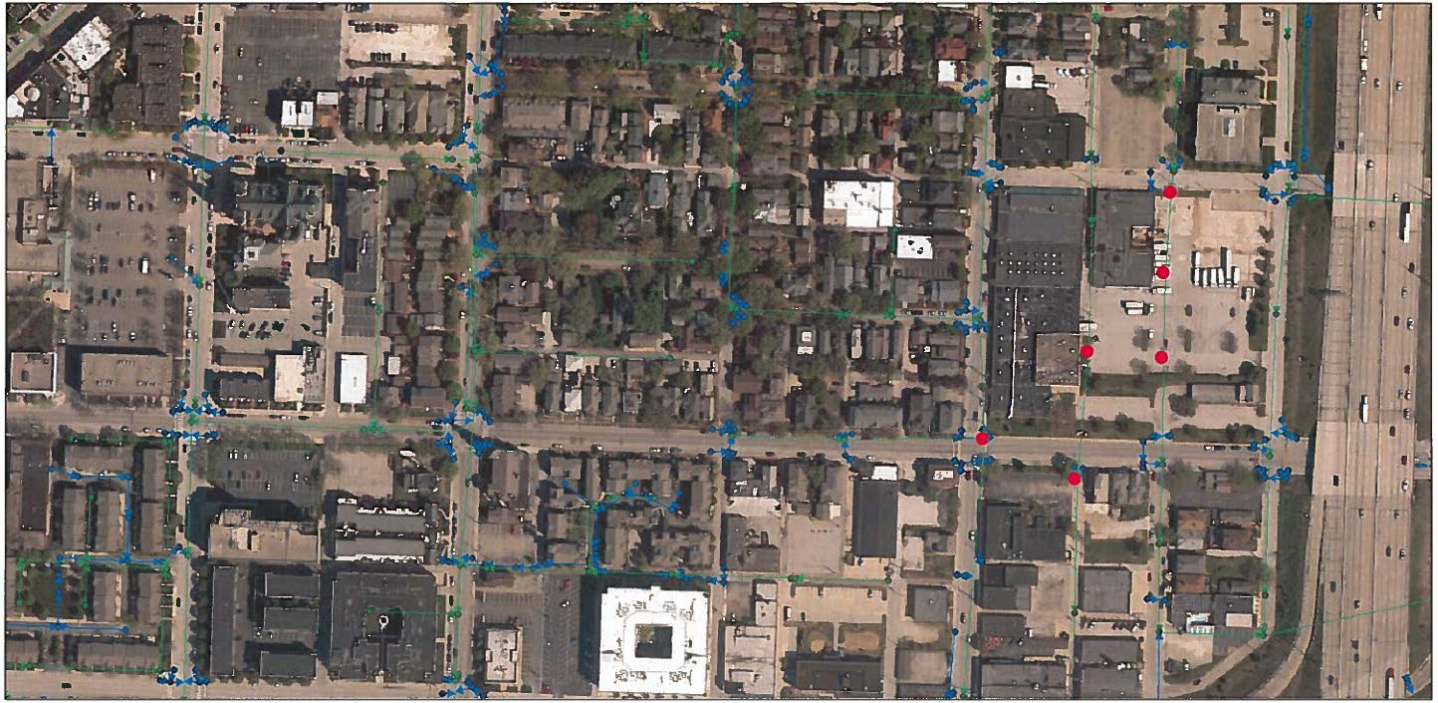
VI - Another Invisible Villian



Preferential Pathways – venting + lining?



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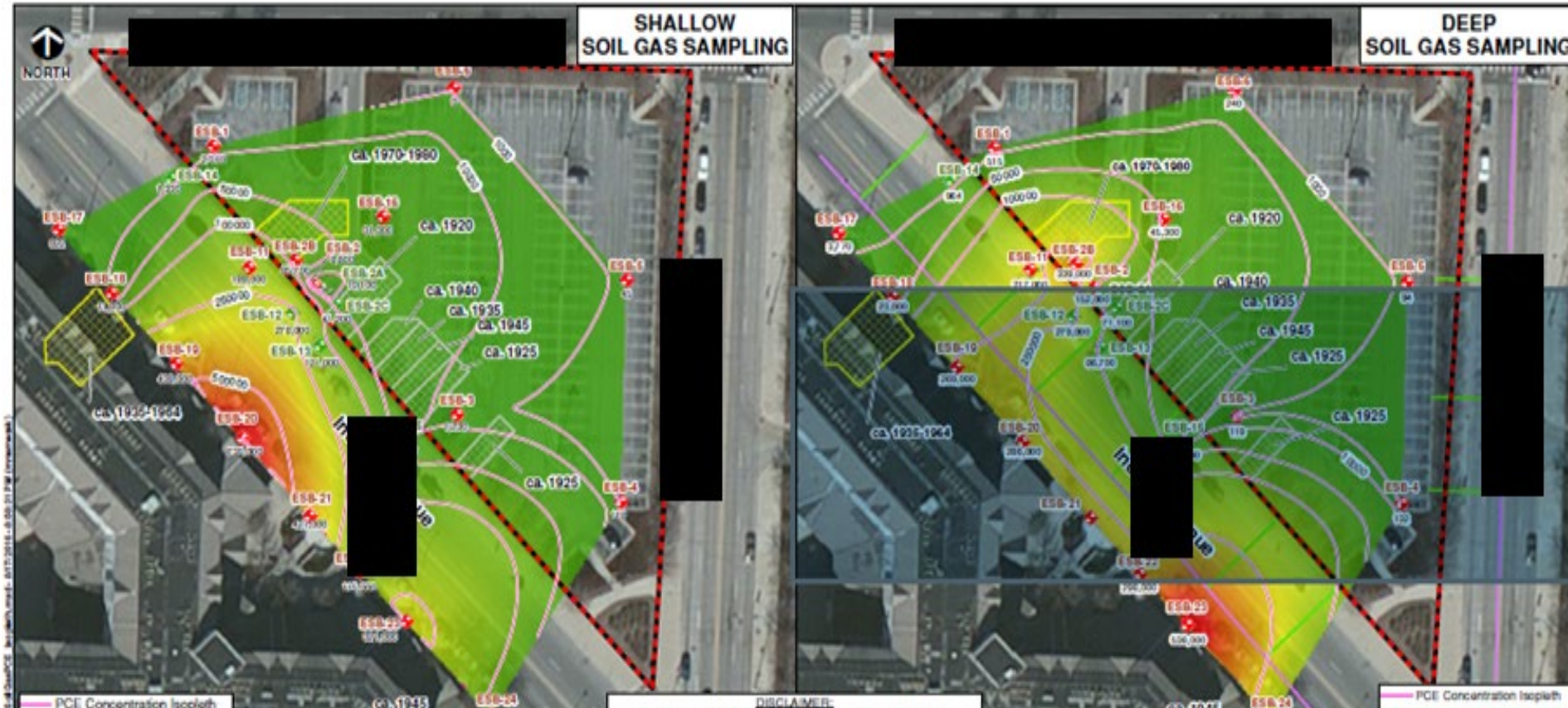
Renewed Focus on Soil Gas



Relative Risk

- Radon is a known human carcinogen causing lung cancer.
- Radon is regulated significantly different than chemical risk.
- Radon vs TCE

Residual Inhalation Radon Risk Comparison with IDEM for Trichloroethylene Inhalation Residual Risk			
Radon Risk at Regulated Level[3]	IDEM Risk of Trichloroethylene[4] at regulated Level (approximate)	IDEM Acceptable Residual Concentration	Comparable exposure level using acceptable Radon risk
1 per 100	4 per 1,000,000	2.0 ug/m^3	4800 ug/m^3

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Legal Liability – Focus on Five

1. Federal & State Statutory Schemes
   - CERCLA/Superfund – strict, draconian & retroactive
     - Current owner/operator
     - Past owner/operator at time of disposal
   - RCRA – imminent and substantial endangerment (context of TCE exposure and non-cancer risk)
   - State counterparts to CERCLA & petroleum
   - Cost recovery, injunctive relief, redevelopment risk

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Legal Liability

2. Common law theories – nuisance, negligence, trespass, criminal trespass
3. Contractual Requirements
4. Regulatory risks
   - Trend to re-open closed sites for VI (PFAS …)
   - CERCLA Five-Year Reviews (focus on VI, TCE, emerging COCs)
   - OSHA Battleground
   - National divergence on TCE standards rages on …

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Legal Liability

5. Litigation: Toxic tort claims
   - VI remains the driver
   - Injunctive relief, clean up demands, property damage, wrongful death, bodily injury, fear of future harm
   - Key characteristics of litigation targets
   - Lessons learned and being learned

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A decade in review:

- Significant litigation costs
- Government shutdowns and other scheduling delays … early settlements are elusive
- Scientific debate and uncertainty can be obstacles to early settlement
- Frustrated judges
- Attorney (contingency) Fee obstacles
- Motion (mal)practice – weaponizing the courts
- Bad facts + bad science = bad law
- Unpredictable results = appeals

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Radon Legal Liability

- Naturally occurring and envtl liability statutes don’t cover
- Radon lawsuits generally fall in two buckets: tenant and workplace exposure
- Key sources of liability flow from property ownership, contracts, state disclosure statutes, fraud, negligence, and malpractice allegations
- Contract – understand your legal obligations
- Disclosure – monitor changes and new rules
- Litigation - some recent cases

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Radon Cases (snapshot 2019 to date)

- NY case – allegations that state failed to conduct radon testing in group disability homes
- NY and Maryland – failure to disclose radon; defective construction
- WA – radon testing at City of Vancouver's fire station
- NJ – only certified persons may test for radon
- FL – Suit against phosphate mining company, residential redevelopment w/ no disclosure for radon

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Considerations

- National focus on stewardship and post-closing, periodic monitoring and assessment of potential risk
  - How often and how long?
  - What happens if responsible party dissolves, moves, etc.?

- New tools and technology available to help address these issues and maximize legal protections by reducing exposure risk (manage exposure = safe structures = reduce risk)

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Recommendations

- Mitigation remains a tremendous growth area requiring a basic understanding of the legal issues, technical considerations, and regulatory climate
  - Long term stewardship / continuing obligations
  - Operation, maintenance, and monitoring (OM&M)
- Establish your “indoor air environments” team and build alliances
  - State of science evolving at a rapid pace
  - Understand new tools and deploy based on site-specific features

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Recommendations

- Develop a list of pre-bid specifications:
  - Understand the project and key players – who is requiring the system, why is it being installed
  - Conceptual Site Model (CSM)
  - VI CSM to understand vapor migration and preferential pathways
  - Type of system (active vs passive)
  - Performance objectives
  - Ambient and background (indoor) air data

- Develop an internal screening process
- Strategically narrow your scope of services

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Radon Resource

- The Environmental Law Institute (ELI)
  - ELI “deliver[s] insightful and impartial analysis to opinion makers, including government officials, environmental and business leaders, academics, members of the environmental bar, and journalists. ELI is a clearinghouse and a town hall, providing common ground for debate on important environmental issues.”
  - Indoor Environments Program (Indoor Environments Program | Environmental Law Institute)
  - Annual summary of State Radon rules, policy, guidance (ELI's Database of State Indoor Air Quality Laws: Main Page | Environmental Law Institute)

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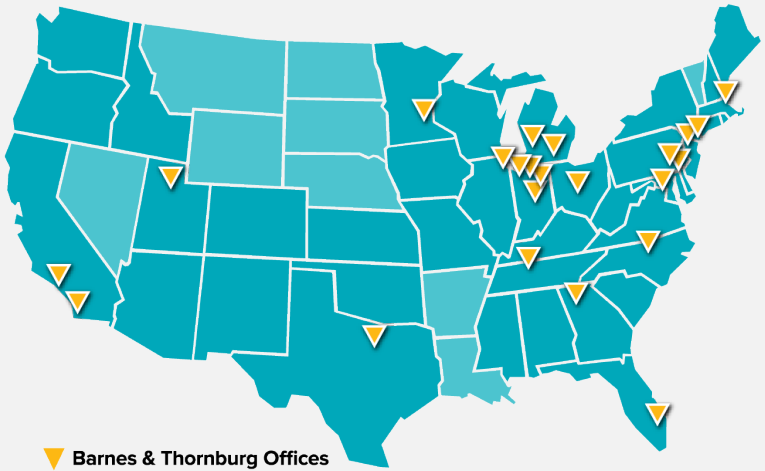

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