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IEA Annual Symposium

VI (and Radon) Legal Updates

David Gillay
October 5, 2026
General Session



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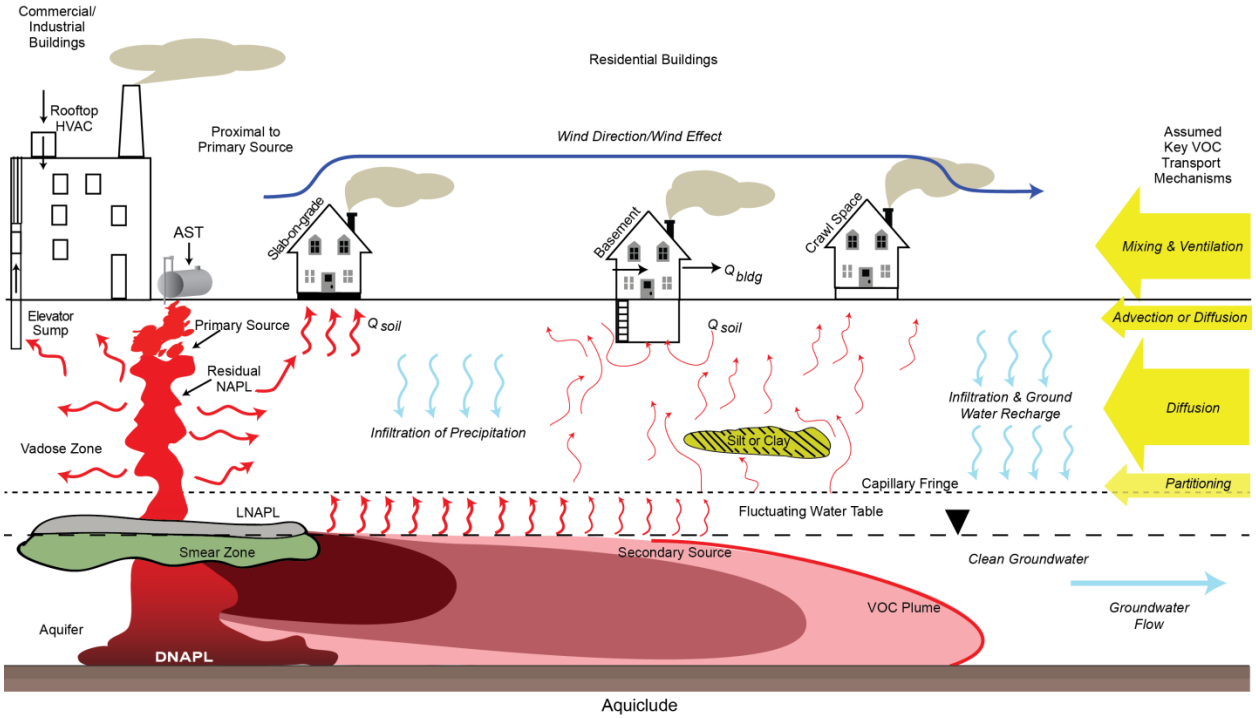
Overview

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

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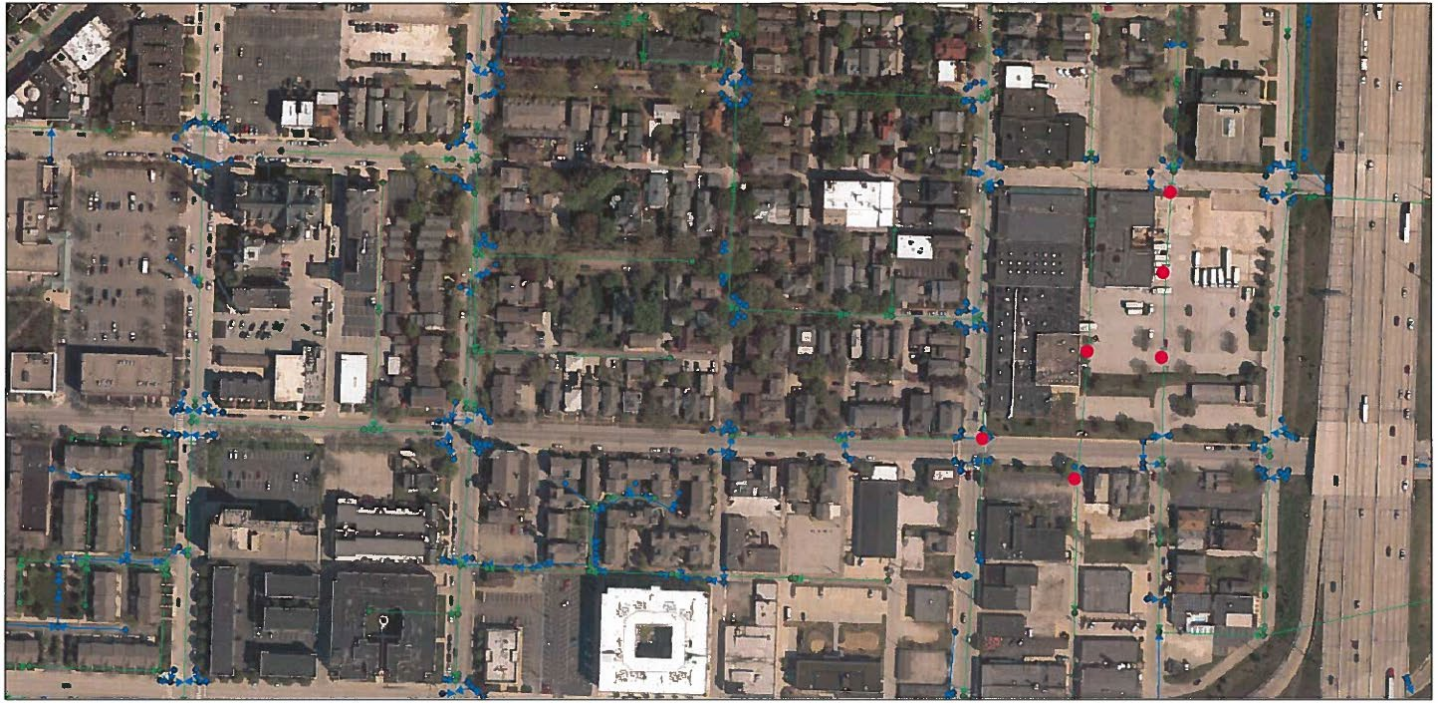
VI - Another Invisible Villian



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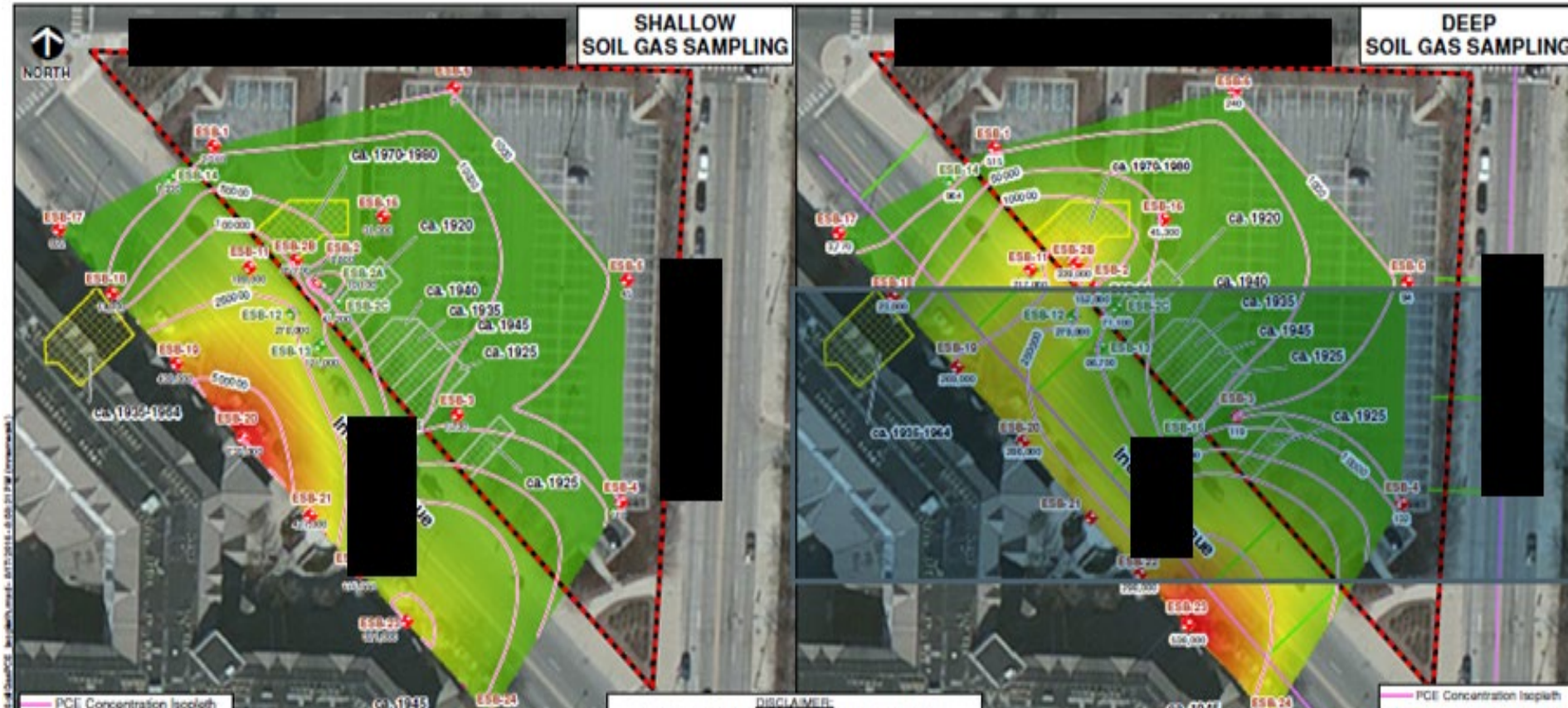
Preferential Pathways – superhighways?



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Continued Focus on Soil Gas



Legal Liability – Five Categories

1. Federal & State Statutory Schemes
   - CERCLA/Superfund – strict, draconian & retroactive
     - Current owner/operator
     - Past owner/operator at time of disposal
     - Overview of key defenses
   - 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 …)
   - 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 (numerous high profile cases are headed to trial in 2027)

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A decade in review:

- Significant litigation costs
- Early settlements are elusive
- Scientific debate and uncertainty are obstacles to early settlement
- Frustrated judges - 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 over last year)

- TX – suit over radon mitigation services
- FL – negligent install of a radon mitigation system
- OH – breach of contract for unsafe radon levels against LL
- IN – contractor damage to radon mitigation system
- NY – trespass, nuisance, and negligence related to unhealthy and unacceptable levels of radon in an adjacent property
- MO – failure to disclose numerous defects, including mitigation system

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Considerations

- Looking for permanent solutions – buying contaminated sites, securing institutional controls, entering into agreements to manage risk (LTS)

- 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.?
  - Financial assurance challenges

- New tools and technology available to help address these issues and maximize legal protections by reducing exposure risk for option 3 (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:
  - VI CSM to understand vapor migration and preferential pathways
  - Type of system (active vs passive)
  - Performance objectives
  - Options to manage OMM

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

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Firm Overview

Barnes & Thornburg is a national, full-service law firm. We serve clients worldwide and collaborate smoothly across offices.

Our deep bench of talent means we can easily pull in additional support as needed.

900+

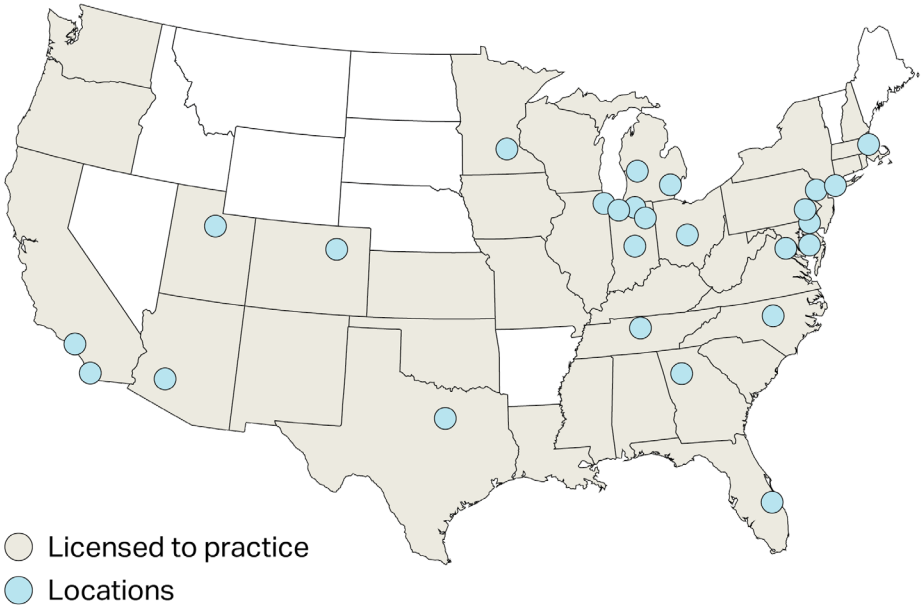
LEGAL PROFESSIONALS

50+

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25+

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Environmental

Our nationally-ranked team advises on virtually every area of environmental law, the regulatory and legislative process, and related litigation.

The Environmental Department as 21 primary members and over 30 secondary members located across our Firm's national footprint.



Key Service Areas

- Air Quality
- Brownfields and Environmental Transactional Diligence
- Environmental Litigation
- PFAS and Emerging Contaminants
- Remediation, Redevelopment, and Environmental Due Diligence
- Water
- Environmental Crimes and Investigations
- Waste Management

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Environmental Litigation

Proven Counsel for Complex Environmental Litigation

At Barnes & Thornburg, we help clients manage environmental litigation with a clear, pragmatic approach — from defending high-stakes toxic tort claims to resolving multimillion-dollar cleanup disputes. Our attorneys combine trial-tested experience with regulatory fluency to protect business operations and manage legal risk.

Citizen Suits & Permit Challenges

We advise on and defend litigation brought under the Clean Water Act, Clean Air Act, and RCRA—including permit challenges and citizens' suits filed by environmental groups and community stakeholders.

Natural Resource Damages & Government Enforcement

We guide utilities through NRD claims and enforcement actions brought by state, federal, or tribal agencies, with a focus on coordinated resolution across overlapping regulatory frameworks.

Toxic Tort & Hazardous Substance Defense

We defend utilities in matters involving alleged air, water, and soil contamination; such as PFAS, PCBs, coal combustion residuals (CCR), and other regulated materials, brought by individuals, communities, or state actors.

Superfund, CCR, and Site Cleanup Disputes

We represent power generators in CERCLA and RCRA cost recovery and allocation disputes, including ash pond closure litigation, groundwater claims, and sediment liability tied to legacy operations.

Integrated Litigation Strategy

From administrative proceedings and trial to settlement and ADR, we balance legal risk with public scrutiny, ratepayer obligations, and agency relationships to develop litigation strategies that support Georgia Power's broader regulatory posture.

Your Litigation Team

- ✓ Trial-tested counsel with regulatory fluency
- ✓ Aligned with public service missions and cost-containment goals

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Environmental Regulatory

Practical Environmental Counsel for Evolving Regulatory Needs

At Barnes & Thornburg, we partner with clients to navigate the full spectrum of environmental challenges — from compliance with complex regulatory frameworks to managing air emissions, site remediation, and hazardous materials.

Regulatory Compliance & Enforcement Defense

We guide clients through complex federal, state, and local environmental regulations, helping minimize risks through proactive compliance strategies and defending against enforcement actions when needed.

Air Quality & Permitting Guidance

Our attorneys support permitting for facility operations and expansions, help clients comply with complex air emissions standards, and assist in mitigating greenhouse gas and hazardous air pollutant risks.

Sustainability & Emerging Compliance Issues

We counsel clients on ESG initiatives, climate change disclosure requirements, vapor intrusion risks, and adapting to evolving regulatory frameworks that impact environmental and sustainability commitments.

Remediation & Superfund Site Management

Our team advises on CERCLA and RCRA cleanups, cost allocation among responsible parties, and coordination with regulatory agencies to develop practical, cost-effective site remediation solutions.

Redevelopment & Environmental Transactional Due Diligence

We provide clients turn-key support and guidance on pre-purchase due diligence, investigation, clean up,, closure, and redevelopment of environmentally challenged properties. This often involves pursuing and obtaining funding from various tax incentives, grants, insurance products, and cost recovery claims/litigation.

Your Advocates

- ✓ Deep agency relationships
- ✓ Engineering and science-trained attorneys
- ✓ National coverage with industry-focused strategies

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David leads Barnes & Thornburg LLP's Environmental department's remediation, redevelopment, and environmental transactions practices. He has focused on the legal, regulatory, and technical impact and implications related to the vapor intrusion pathway, chlorinated VOCs (with an emphasis on TCE), and potential long-term stewardship obligations related to environmentally challenged properties.

David works closely with governmental regulators on complex technical matters related to the characterization, cleanup, and closure of contaminated properties. David's practice also includes environmental compliance, environmental permitting, confidential audits, and remediation projects dealing with soil, surface water and groundwater contamination, and ecological risk assessment.

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