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December 6, 2012

United States Environmental Protection Agency
OSWER Final Vapor Intrusion Guidance Work Group
USEPA Office of Superfund Remediation & Technology Innovation
Potomac Yards South, Room 5826

Attention: Richard Kapuscinski, PhD, PE

RE: Comments on Development of Final Vapor Intrusion Guidance
Docket – EPA-HQ-RCRA-2002-0033

Dear Mr. Kapuscinski:

A reporter seeking comment forwarded to us this week an apparently "leaked" draft of the USEPA Office of Solid Waste and Emergency Response (OSWER) *Final Guidance for Assessing and Mitigating the Vapor Intrusion Pathway from Subsurface Sources to Indoor Air*.¹ This draft, dated November 7, 2012 throughout, is a significantly more polished document than the leaked draft published by *InsideEPA* in November (which was dated June 2012). The draft we received looks ready for imminent release by USEPA. **Our sincere hope is that this draft** (or something like it) **will be released as a draft for formal public comment, and not as final guidance.**

Vapor intrusion is a uniquely complicated pathway to evaluate and the results can be uniquely personal. We are often impressed by the reasonable response of homeowners and office workers to the search for and detections of chemicals in the breathing air of their homes and offices. But it is also easy to understand the fear and suspicion that can arise. For this reason, the substance and language of the final version of this important guidance document will

¹ We also received a blackline dated October 18, 2012, of the OUST Guidance for Addressing Petroleum Vapor Intrusion at Leaking Underground Storage Tank Sites.

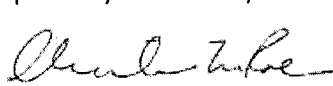
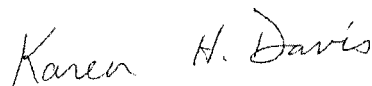
matter a great deal to parties responsible for investigating the potential for vapor intrusion in our communities, as well as to the members of the communities themselves. Too much work has gone into the generation of this guidance for it to be issued without the final additional step of open public comment and dialogue on an actual draft -- like the one we have been fortunate to see. OSWER and the Vapor Intrusion Intra-Agency Workgroup have put great effort into appropriately addressing the innumerable complexities of VI, based on the best information available. The work product is thorough and impressive. Private parties also have taken the time to prepare and submit valuable comment in the RCRA docket on the topic of vapor intrusion generally and the parts of the OSWER approach that it has released. But the significant handicap to providing meaningful input for all private parties, both responsible party representatives and community representatives, is that the last publicly released USEPA draft, the November 2002 Draft, is no longer relevant. Comments submitted to the RCRA Docket by the American Petroleum Institute and IBM, among others, reflect this concern. We can confirm from the leaked November 7, 2012 draft that the 2002 draft has not been updated, it has been completely rewritten.

As environmental lawyers with experience counseling responsible parties and landowners through vapor intrusion investigations, there are aspects to the November 7 draft that are troubling to us -- language and requirements we believe will generate unnecessary fear or leave even reasonable and thorough investigations subject to criticism that more work could or should be done. There are clarifications needed. We would welcome the opportunity to provide specific comments to USEPA on this draft on behalf of myself and others, but to do so now, would mean that we are providing comment on a draft document, not generally circulated, that bears the header, "*Draft Internal EPA Deliberative Document-Do Not Cite Quote or Release.*" It would be unsettling if USEPA accepted comment now from the limited number of private parties that have come to receive the leaked document.

For this reason, we respectfully request that USEPA release drafts of the *OSWER Final Guidance for Assessing and Mitigating the Vapor Intrusion Pathway from Subsurface Sources to Indoor Air* and the *OUST Guidance for Addressing Petroleum Vapor Intrusion at Leaking Underground Storage Tank Sites* for public review and comment. We believe this step would "increase the quality of the guidance and provide for greater public confidence in and acceptance of the ultimate agency judgments."²

We appreciate your consideration of this request.

Respectfully submitted,

Christopher M. Roe

Karen H. Davis



Adam H. Cutler

² Bulletin No. 07-02, OFFICE OF MANAGEMENT AND BUDGET
Final Bulletin for Agency Good Guidance Practices, p. 15.