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Superfund/Comprehensive Environmental Response Compensation and Liability Act: U.S. Environmental Protection Agency Final Rule Adding Subsurface Intrusion to the Hazard Ranking System

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The United States Environmental Protection Agency ("EPA") announced on December 7th that it was issuing a final rule adding "subsurface intrusion" as a hazard that can qualify sites for the Comprehensive Environmental Response Compensation Liability Act ("CERCLA") or ("Superfund") National Priority List ("NPL").

EPA describes subsurface intrusion as the migration of hazardous substances, pollutants or contaminants from contaminated groundwater or soil into an overlying building.

The CERCLA Hazardous Ranking System ("HRS") is the principal mechanism the federal agency uses to evaluate sites for placement on the NPL. The CERCLA HRS quantifies negative impacts to air, groundwater, surface water, and soil. The agency can propose placement on the NPL sites that receive HRS scores above a specific threshold. Such sites are targeted for further investigation and possible remediation through the CERCLA program. This is an important step since only NPL sites are eligible to receive federal funding for long-term cleanup which can result in a permanent remedy.

EPA has determined that an HRS assessment is not complete without an evaluation of threats posed by subsurface intrusion contamination. This absence is deemed an omission of a known pathway of human exposure contamination.

The agency states that the addition of subsurface intrusion to the HRS is:

...compliant with Comprehensive Environmental Response, Compensation, and Liability Act. . .Section 105(a)(8)(A), which requires EPA to prioritize sites based on the population at risk, the potential of hazardous substances at such facilities, the potential for contamination of drinking water supplies, the potential for direct human contact [and] the potential for destruction of sensitive ecosystems.

The subsurface intrusion addition is also deemed to improve the agency's ability to:

- Identify priority sites for further investigation

- Enhance EPA's ability, in dialogue with other federal agencies and the states and tribes, to determine the most appropriate state or federal authority to address sites

EPA cites developments since the HRS was revised in 1990 as a rationale for the addition of subsurface intrusion noting that:

. . .the technology to detect and evaluate subsurface intrusion threats was not sufficiently developed. For example, there were no health-based benchmark concentration values for residences or standardized technologies for sampling indoor air, precision of analytical equipment prior to computerization was limited, and associations between contaminated groundwater and soil vapors was not well understood. However, it is now possible for subsurface intrusion threats to be evaluated in a more comprehensive manner. Therefore, it is now appropriate, given the potential that subsurface intrusion presents for direct human contact, to add to the HRS the consideration of threats due to subsurface intrusion.

[A link to the 181-page final rule can be found here.](#)