

FRIDAY, AUGUST 13, 2021

Vapor intrusion rules hamper infill projects

By Thor Kamban Biberman

Infill development, which is a critical component to solving California's housing crisis, is being hampered by rigid standards for vapor intrusion, according to a group of industry experts. In 2015, the U.S. Environmental Protection Agency proposed a guidance AF (attenuation factor) of 0.03 to screen sites for vapor intrusion – or the amount of chemical vapors that seep from the ground into the indoor air of a building. Critics argue the standard is very arbitrary and onerous, yet the California EPA has adopted similar standards. San Diego's Dan Johnson and Jack Monger, along with San Francisco's Brad Wiblin, recently released a white paper saying the standards will render some, and perhaps many, projects impossible to develop.

They argue the AF level was not intended as a cleanup standard, and it is 30 times more sensitive than the standard previously used in California. This is a problem, they say, because the much higher standard was derived from analyzing sites on the East Coast and in the Midwest, where ventilation is a particular problem in the winter when homes are closed up tight. Only four sites were identified in the state as being tested for this study, and all were in Northern California. The subsequent application of the proposed AF level to California sites greatly increases the investigation and cleanup measures that have historically been safely applied in the state, and it increases the accompanying costs.

The paper noted that under Gov. Newsom's latest budget plan, \$500 million is being set aside to build 7,500 housing units in the state – most of which would be in infill sites, which typically have more contaminants. The more stringent standards, in turn, would not only present an issue for market rate and affordable housing, but for mixed-use developments as well. "Nobody wants to be exposed to toxic buildings, and if the concentrations are high enough, that's one thing, but these levels are fine," said John-

son, a project director with the environmental consulting firm SCS Engineers. He added the governing documents "need to be based on the right science." Johnson said while the Cal EPA is relying on data from the US EPA from 2015, a State Department of Toxic Substances Control (DTSC) report arrived at a much less stringent number. "These policies affect thousands of properties, and it's all about having the right science," Johnson said. Another advantage of the DTSC report, according to Johnson, is that it's based on data from 52 sites in 16 counties in California, unlike the U.S. EPA survey.

The paper asks Cal EPA to release and incorporate DTSC findings into the environmental record before a revised version of the rules is released to the public. The sites that can cause the most vapor intrusion include properties that used to house gasoline stations, dry cleaners, parking lots, industrial uses, and commercial uses. The properties are considered brown fields due to the massive amount of cleanups required. Johnson complained about Cal EPA's transparency in developing the regulations, noting the first public airing of the requirements was during the initial pandemic lockdown. Among other things, Johnson, Monger, and Wiblin have developed a framework for adopting policies they say will facilitate infill development and safeguard the housing from unwanted toxics at the same time. The authors said housing will be adversely impacted by the current regulations on a variety of fronts including:

- Most properties will not be able to achieve cleanup levels and will remain vacant and blighted.
- Development costs will increase, and delays in approval processes will discourage investment at infill properties.
- Financing will be made very complicated, potentially knocking projects out of streamlined approvals.

Wiblin, executive vice president of Bridge Housing Corp., related the case of an otherwisefullyentitled51-unitpropertyinBerkeley

that previously had received a no further action (NFA) statement from the San Francisco Bay Regional Water Quality Control Board in January 2016. In January 2019, the water board adopted significantly more stringent environmental screening levels for soil vapor, creating uncertainty over whether the previous NFA was still valid. In March 2019, Bridge Housing obtained site control. It was given its pre-approved entitlements, and assumed the property was ready for development within 10-12 months. It wasn't, and Bridge had to add hundreds of thousands of dollars for a mitigation Wiblin said wasn't necessary. "We've been on this road show for a year and a half," he said. Wiblin said while he is focused on 20 other things, ranging from labor availability to material costs, the vapor intrusion issue continues to present itself. "Frankly, almost every project we do is an infill project," he said, adding that parking lots used to be a non-issue but not anymore.

During its due diligence, Bridge Housing learned the water board halted construction at another project which had vapors that were below the older environmental screening levels, but above the 2019 levels. The developer ultimately agreed to retrofit a vapor barrier in the midst of construction.

"Our seller agreed to amend the purchase agreement, reopen a case with the water board, and commissioned additional soil vapor samples," Wiblin said.

"We found that vapors were well below the old ESLs and would not have warranted any further action, but some [volatile organic compounds] were slightly above current standards." Bridge Housing drafted a correction action plan, which called for soil removal and a vapor barrier to be installed along with on-going monitoring. In their white paper, Johnson, Wiblin and Monger said uncertainty over environmental conditions and mitigations will add significant upfront costs, substantial delay, and annual monitoring costs for up to 10 years. thor_biberman@sdtranscript.com ■