

CA AGENCIES GO ROGUE ON NEW STANDARDS FOR VAPOR INTRUSION

THE CALIFORNIA EPA HASN'T DECLARED NEW MEASUREMENT STANDARDS FOR VAPOR INTRUSION, BUT REGIONAL AGENCIES HAVE STARTED TO ADOPT THE FEDERAL GUIDELINE.

By **Kelsi Maree Borland**

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There could be new more stringent standards to measure vapor intrusion in California—or maybe not. It seems to depend on the agency. The California EPA, which oversees several environmental agencies throughout the state, has not adopted new measurement standards are vapor intrusion, but regional agencies have. These agencies, which include regional water quality control boards, have begun employing the federal EPA guideline, and it is causing a lot of uncertainty for property owners.

“The origin is still a bit mysterious,” **Preston Brooks**, partner at **Cox, Castle & Nicholson**, tells GlobeSt.com. “There was a 2015 standard that was adopted by the US EPA, and I think that at the California EPA level, there were good reasons not to follow suit. The standard was based on East Coast conditions, and there are some significant differences between East Coast and West Coast vapor intrusion.”

California officially uses the Johnson and Ettinger model for vapor intrusion. The model anticipates that there will be differences between individual properties that could impact the measurement of vapor. Brooks says that it is an effective model for California, and to his knowledge, no objections. “There was not movement to shift from the Johnson & Ettinger model, he says. “There was nothing wrong with the system that we had. It was conservative and health protective. So, why fix something that isn’t broken? Yet, that seems to be what has happened.”

While the new standards have the potential to significantly impact real estate owners, the lack of continuity on the guideline is causing uncertainty. “The California EPA is not speaking with one voice,” says Brooks. “There are splinter groups within California EPA that are adopting this new screening level. The agency is the parent agency to at least three environmental agencies: The Regional Water Quality Control Boards, The DTSC and OEHHA, which is the risk assessment group. The San Francisco Regional Water Quality Control Board went out on its own and adopted new ELSs for soil vapor. So, they went out ahead of their parent agency before the EPA could adopt a more unified approach. Then the DTSC and the OEHHA office have started employing the new ESLs on a case-by-case basis.”

Real estate professionals are unsure about how to move forward, but are collectively asking for clarity. “Practitioners are urging the California EPA to be circumspect about the new standard because we do think that it will have a significant detrimental effect on real estate transactions, particularly on projects that have a lower margin of profitability, like affordable housing and homeless shelters,” says Brooks. “We think that this new standard imposes unnecessary steps, cost and time delays that are unnecessary.”