

The following presentation is for information and discussion purposes only. Any views or opinions expressed are the speakers'; shall not be construed as legal advice; and do not necessarily reflect any corporate position, opinion or view of Great American Insurance Company, or its affiliates, or a corporate endorsement, position or preference with respect to any contractual terms and provision or any related issues. If you have any questions or issues of a specific nature, you should consult appropriate legal or regulatory counsel to review the specific circumstances involved.

The Great American Insurance Group eagle logo and the word marks Great American® and Great American Insurance Group® are registered service marks of Great American Insurance Company.

© 2018 Great American Insurance Company. All rights reserved.





2018 EMERGING TRENDS IN ENVIRONMENTAL INSURANCE

Sara Brothers
June 2018



Year 2 of Trump Administration – States Continue to take the Lead...

- Federal Regulations continue to be delayed
 - 2 year deferral- Clean Water Act, RMP rules, Pb in drinking water
- No new federal enforcement initiatives
- Federal Superfund / Brownfields Initiative
- 2018 BUILD Act
 - Updates CERCLA – clarifies tenant protections under BFPP defense
- State Programs continue to evolve
 - New MCLs, Risk-based screening levels, vapor intrusion guidance (MI)



Citizen Suits

- **Provisions:**
 - RCRA - 42 U.S.C. § 6972
 - Clean Water Act - 33 U.S.C. §1365
 - Clean Air Act - 42 U.S.C. §7604
 - Most federal environmental statutes
- **Driven by:**
 - Greater Data Availability
 - In lieu of (or addition to) to Agency Enforcement
 - NGOs (Sierra Club, Riverkeepers)





Mold - Continued High Frequency of Claims

Project/Services Policies

- During construction
- Severe weather, wet season, gypcrete, leaks
- Design & construction defects (HVAC, windows)

Site Policies

- Discovery during renovations
- Bodily injury claims by tenants/residents (habitational)
- Severe weather with water damage & mold cleanup
- Loss of use/business interruption (hospitality industry)

Risk Mitigation

- **Construction Methods, Material Management, & Mold O&M Plans**



Redevelopment

Project/Services Policies

- Exacerbation of pre-existing conditions (tanks, ACM)
- Improper off-site disposal of excavated materials
- Line or tank strikes & releases
- Stormwater/sediment releases
- Third-party BI due to dust/mold/ACM

Site Policies

- Non-native fill and contaminated soil (metals, pesticides, and ACM in soil) – increased disposal and handling costs
- Phantom tanks, pre-existing conditions, vapor intrusion

Risk Mitigation

- EHS protocols, due diligence



Stormwater, Sediment, and Sewage Discharges

Project/Services Policies

- Contractor responsible for implementing stormwater management plan, controlling sediment, protecting stormwater/sewer lines
- Releases can result in civil fines & penalties, enforcement & third party property damage & cleanup

Site Policies

- Non-compliance may result in agency and third party (NGO) civil suits, increased scrutiny
- Industrial wastewater discharges /upsets may require cleanup

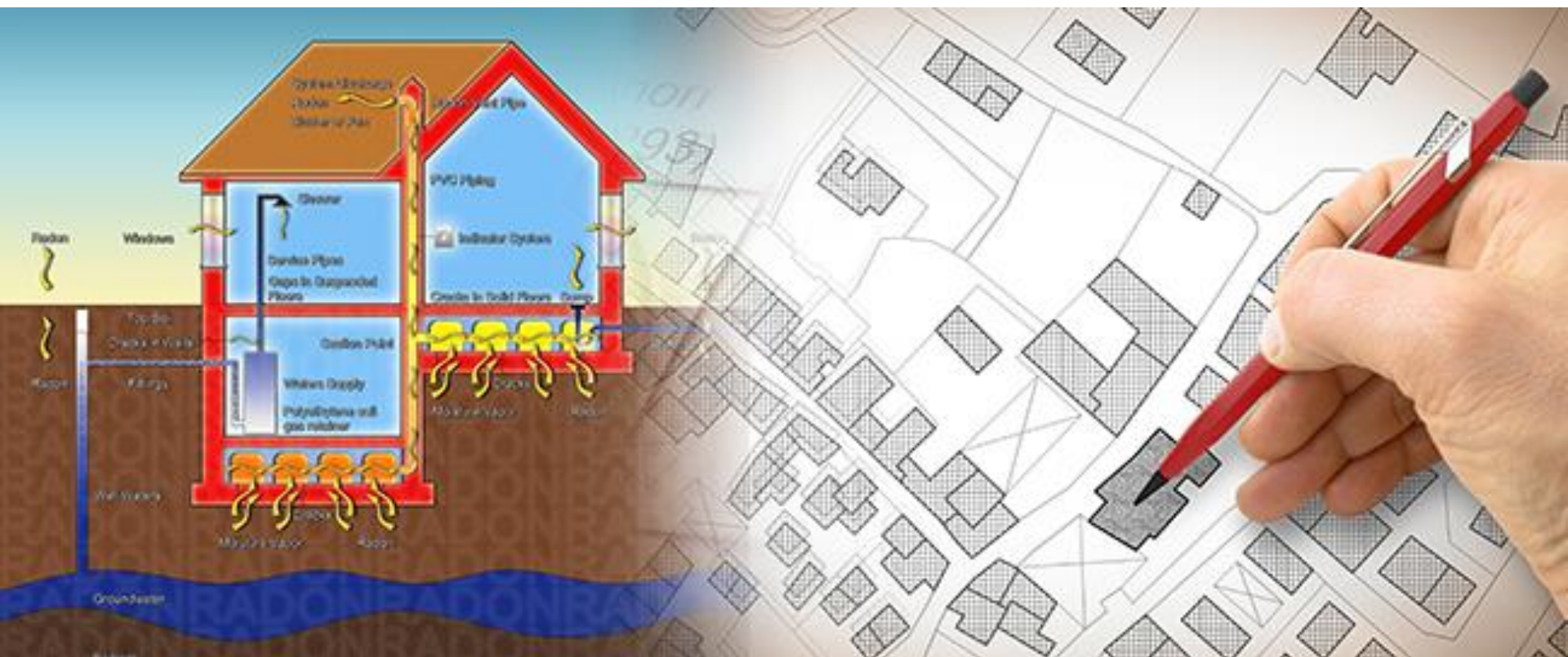
Risk Mitigation

- **Stormwater Management Plans, Permits**



The Life Cycle of an Emerging Contaminant

- 1,4-Dioxane (solvent stabilizer, soaps, shampoos)
 - NYSDEC –All state Superfund sites (~850) to be tested for 1,4-dioxane & PFAS by end of 2019 – prioritizing Long Island (154 sites)
- PFOAs & PFOS (DOD, airports, textiles, resins, landfills)
 - PFBS, GenX – Identified in May 2018 Federal EPA National Leadership Summit
- Perchlorate (explosives, DOD, aerospace, propellants)
- 1,2,3-Trichloropropane (agricultural) – MCL eff 12/14/17 – 5 ppt
- Sulfolane – refineries (North Pole); capsaicin (LA)



Vapor Intrusion – Recognition/Standardization

- **No new guidance at Fed level**
 - **EPA Guidance** – Finalized June 2015
 - **TCE Accelerated Response & Urgent Action Levels** – Region 9 - 6/30/2014 Memorandum
- **Evolution of State Programs continuing**
 - OH, MA, CA, NJ – more stringent – greater emphasis on indoor air & on remediation (vs. barriers or controls)
- **Reopeners & Re-evaluation**
 - Federal – Superfund 5-year reviews
 - State (examples) –MN, MA, NY, NJ, WA
- **Vapor Intrusion added to Superfund Hazard Ranking Score**



Severe Weather Events, Natural (and Man-made) Disasters and Climate Change

- Flooding and resultant mold, sewage, and petroleum /chemical releases
- Water Infiltration & storm damage – leading to mold/release
- Wildfire dispersion of hazardous materials (ACM, chemicals)
- Hazardous building material disposal at landfills/reduced capacity at construction/demo facilities
- Permanent remedies damaged (caps, wells, etc.)
- Chemical releases
 - e.g. Crosby, TX plant with third party BI/PD & cleanup



What's new with tanks?

- Several states have recently promulgated AST rules for Financial Assurance (e.g. CO)
- ASTs also included in many State Tank Storage Funds
- New classes of USTs regulated (2015 Federal rules)
 - Emergency generator tanks, field constructed tanks, airport hydrant systems
- Releases from tanks continue to be common occurrence
 - Theft, Fueling/filling, malfunction/improper O&M
 - **OLD tanks! 1988 rules are now 30 years old!**
- Recent state actions for MTBE
 - NJ settlement, MD suit
 - Contingency law firms



Questions?

Sara Brothers

sbrothers@gaig.com

646-564-5291

GAIG.com/Environmental