

# HONIGMAN

## Vapor Intrusion Issues in Real Estate Transactions

Megan Conlon McCulloch  
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## Two Common Scenarios

- **Brownfield Redevelopment**
  - Former industrial site
  - On-site soil and groundwater impacts
- **Commercial Property Purchase**
  - Former dry cleaner or gas station on-site or nearby

## Due Diligence

### Purpose

- Identify and quantify environmental risks to enable informed risk assumption and allocation
- Conduct AAI as part of obtaining protection from liability under CERCLA
- Understand site conditions and potential due care obligations

### Steps

- Phase I ESA
  - Need to understand scope and exclusions
- Phase II ESA, if necessary
- State law (e.g., BEA and Due Care Plan in MI)

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## Role of VI Guidance

- ITRC 2007
- ASTM E 1527-05
- ASTM E 2600-10
- EPA VI Guidance
- State VI Guidance

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## Deal Timeline v. VI Timeline

### Deal Timeline

- Moves quickly
- Phase I ESA in less than 1 month
- If needed, Phase II ESA
  - Timing depends on scope
- Negotiate purchase agreement issues
  - Inspection rights
  - Seller's reports
  - Reps & warranties
  - Indemnities
  - Post-closing cleanup obligations

### VI Timeline

- Variable
- Temporal disconnect with deal timeline
- Less certainty, hard for time-sensitive transactions

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## Know When to Fold 'Em & When To Walk Away

### Fold 'Em

- Presumptive mitigation rather than additional investigation

### Walk Away

- Time
- Magnitude of potential issue
- Cost
- Other options

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## Contact

Megan Conlon McCulloch

[mmcculloch@honigman.com](mailto:mmcculloch@honigman.com)

(313) 465-7444

[www.honigman.com](http://www.honigman.com)

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