



New York State Department of

# ENVIRONMENTAL CONSERVATION

[www.dec.ny.gov](http://www.dec.ny.gov)

## TENANT NOTIFICATION OF INDOOR AIR CONTAMINATION ASSOCIATED WITH SOIL VAPOR INTRUSION

On September 4, 2008, Governor David A. Paterson signed legislation adding a new section to the Environmental Conservation Law (ECL 27-2405) to require property owners or owners' agents (such as landlords) to notify all of their tenants and occupants of any test results related to indoor air contamination associated with soil vapor intrusion (SVI) that they receive from certain persons and entities. The new law applies to both residential and non-residential properties.

The phrase "soil vapor intrusion" refers to the process by which volatile chemicals move from contaminated soil and groundwater into the indoor air of buildings. This contamination of indoor air by SVI is an emerging area of public health concern. SVI occurs when volatile contaminants in the subsurface evaporate and rise through pores in soil and into homes and other buildings through cracks and gaps in the building's foundation. When this happens, occupants of these buildings may be exposed to volatile chemicals in indoor air. In certain cases, the vapors may accumulate to levels that may increase the risk of adverse health effects for persons living in or using those buildings. The potential adverse health effects from chemical exposures vary based on several factors, including the length of exposure, the amount of the exposure, the frequency of exposure, the toxicity of the volatile chemical(s), and an individual's sensitivity to the chemical(s). New York has emerged as a national leader in the field of SVI assessment and remediation and this law to assure tenant notification is the first of its kind in the nation.

Key elements of the law include:

**Notification of Sampling Results:** Notice must be given to tenants and occupants when the owner or owner's agent receives from an "issuer", the results of indoor air tests that exceed either a New York State Department of Health ("NYSDOH") guideline or an Occupational Safety and Health Administration ("OSHA") guideline for indoor air quality. An "issuer" includes:

- ✓ the New York State Department of Environmental Conservation (DEC);
- ✓ a municipality subject to a contract with the DEC under the State's Environmental Restoration Program (ERP);
- ✓ a "person" subject to an order under the State Superfund or Oil Spill programs;
- ✓ a "participant" who has entered into a Brownfield Site Cleanup Agreement.

An "issuer" does not include a volunteer under the Brownfield Cleanup Program or any party under the State's Voluntary Cleanup Program.

**Fact Sheets:** Within fifteen days of the receipt of SVI related test results exceeding a relevant guideline, or where a property is subject to an engineering control to mitigate indoor air contamination or is subject to ongoing monitoring, an owner or owner's agent must provide tenants and occupants with one or more fact sheets from the NYSDOH, which identify the following:

- ✓ the compound(s) or contaminant(s) of concern;
- ✓ reportable detection levels for the compound(s) or contaminant(s);
- ✓ health risks associated with exposure to the compound(s) or contaminant(s);
- ✓ a means of obtaining additional information on the compound(s) or contaminant(s).

Tenants and occupants must also be given timely notice by the owner or owner's agent of any public meetings that have been scheduled to discuss test results.

**Test Results/Closure Letters:** Tenants and occupants have the right to request test results and any regulatory closure letter related to the property from the property owner or the owner's agent.

**Properties Subject to Engineering Controls and Monitoring:** Where a property is subject to an engineering control to mitigate indoor air contamination or is subject to ongoing monitoring, the owner or owner's agent must provide fact sheets, as described previously, to a prospective tenant prior to the signing of a lease or other rental agreement. The first page of the lease or rental agreement must also include in at least 12 point bold face font the following language: "**NOTIFICATION OF TEST RESULTS: The property has been tested for contamination of indoor air: test results and additional information are available upon request.**" Prospective tenants also have the right to request test results and any regulatory closure letter related to the property from the owner or owner's agent.

**Failure to Comply:** Property owners and/or agents who fail to comply with these provisions are subject to penalties of up to \$500 for each violation and \$500 per day that they remain in violation. If you believe that a property owner and/or agent has failed to comply with these provisions, you should contact the Regional Attorney's Office of the NYSDEC.

**Effective Date:** The law took effect on December 3, 2008, however, it does not authorize owners and owners' agents to withhold information provided to them prior to that effective date. Owners and owners' agents are encouraged to share all information that they have received concerning test results of indoor air sampling that exceed either a NYSDOH or an OSHA guideline for indoor air quality with their tenants, occupants and prospective tenants.

The complete text of the law can be found under "ENV" - Environmental Law at:  
<http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS>

For additional information on SVI and related policy and guidance documents as well as fact sheets, please visit DEC's website at: <http://www.dec.ny.gov/regulations/2588.html> and DOH's website at: [http://www.health.state.ny.us/environmental/indoors/vapor\\_intrusion/](http://www.health.state.ny.us/environmental/indoors/vapor_intrusion/)