

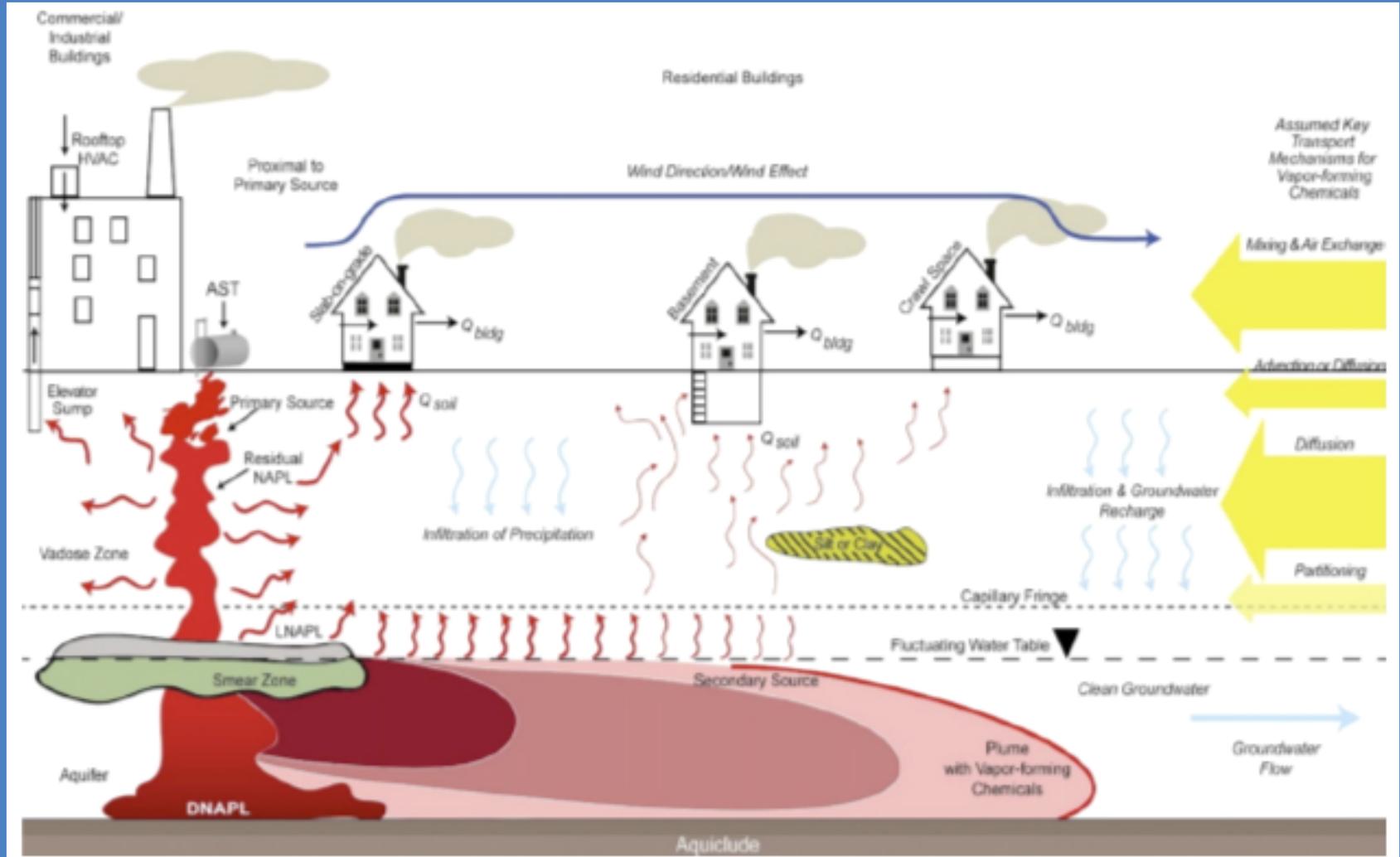
# An Attorney's Perspective on Addressing Vapor Intrusion Issues

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*Jonathan Wells*  
*Partner – Alston & Bird*

# Vapor Intrusion Basics



# Client Management during Due Diligence

- Education is the first step
  - Vapor intrusion basics
  - Regulatory framework
  - Tort liability risks
  - Investigatory costs
  - Remedial costs

# Client Management for Existing Owners

- Where did this come from and why wasn't this covered when I bought the property 10 years ago?!?!?
  - Vapor intrusion emerged in clean-ups in the early 2000s
  - ASTM Standard revised in 2013 and clarified that assessment of potential migration of contaminants includes vapor migration
  - EPA finalized its vapor assessment and mitigation guidance in 2015
- Who can we sue for this??

# More Due Diligence/Transactional Issues

- Managing your consultant's assessment of vapor
  - Occasionally, different approaches depending on representing buyer or seller
- Managing lender relationships
  - If representing seller or buyer and your client is comfortable, efforts to avoid further assessment by lender's consultant
  - If client is lender and loan will be collateralized, different considerations for the reps your client has to make

# Consultant Issues During Due Diligence

- If assessment indicates further investigation is warranted, which type of investigation to pursue?
  - Exterior soil gas?
  - Sub-slab?
  - Indoor air?
- Different parties have different perspectives.

# Regulatory and Remedial Issues

- If there's a vapor issue, do I have to report it to anyone?
  - For the most part, no (particularly if contamination is pre-existing and known).
  - But, some states have more stringent requirements
- Brownfields as a trigger
  - Risk assessment of vapor as a component in most cases
- Remedial options
  - Costs of retrofit
  - For tear-down/rebuild, consideration of passive barriers even if current analysis doesn't indicate it is required

# Thank You & Questions

Jonathan Wells

Partner – Environmental, Land Use, & Natural Resources

Alston & Bird LLP

1201 W. Peachtree Street

Atlanta, GA 30309

(404) 881-7472

[jonathan.wells@alston.com](mailto:jonathan.wells@alston.com)

