Dayton Bar Association

Environmental Law Update
December 17, 2008

Behr VOC Plume Site in Dayton

Daniel A. Brown, Esq.
Brown Law Office LLC
204 S. Ludlow St. Suite 300
Dayton, Ohio 45402
(937) 224-1216
dbrown@brownlawdayton.com

Behr Dayton Thermal Facility

Source of Groundwater Contamination

1600 Webster Street

History of the Facility

- Manufactures vehicle air conditioning and engine cooling systems.
- Chrysler Corporation owned and operated the facility from 1937 until April of 2002.
- Behr Dayton Thermal Products purchased the facility in 2002 and continues the same manufacturing operations.
- For many years, the facility used a common degreaser called trichloroethylene (TCE).

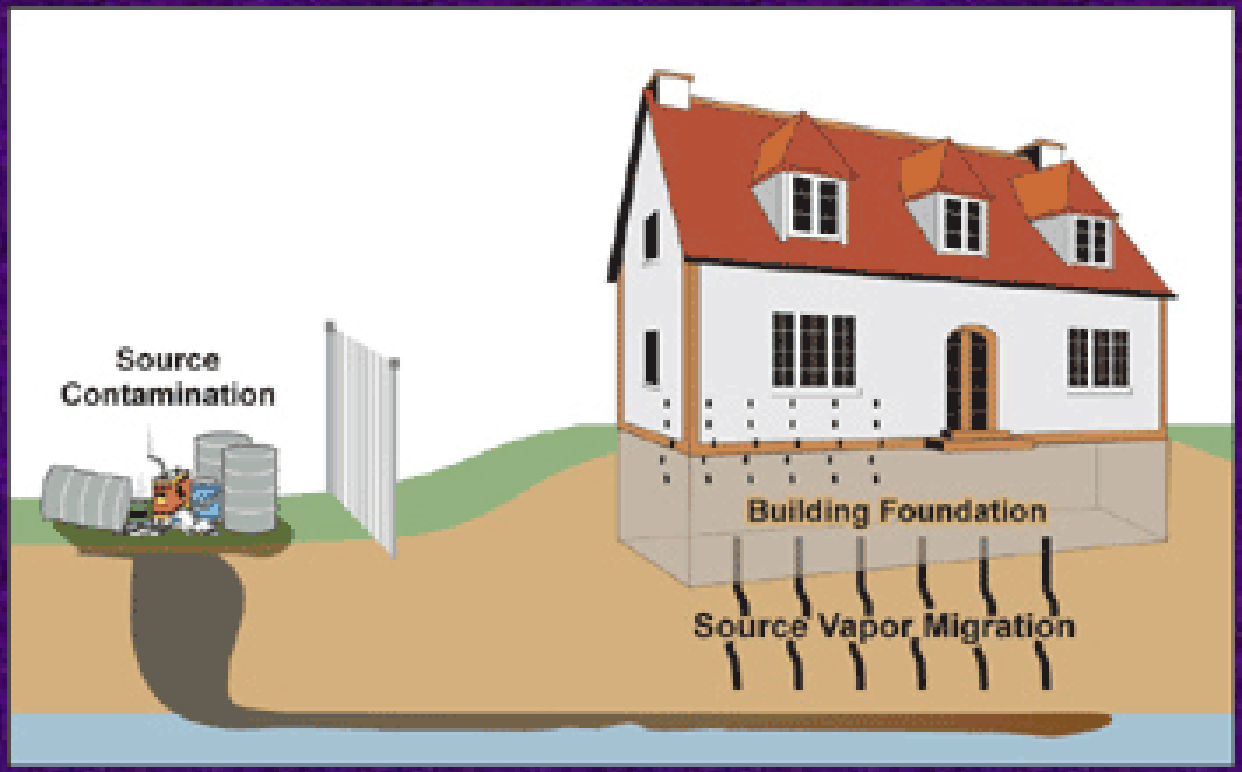
Release of TCE

- During Chrysler's ownership, TCE was released from tanks and piping within the facility.
- The TCE release caused soil and groundwater contamination beneath the facility.
- In response, Chrysler installed a system to remediate soil and groundwater under the facility.
- The response did not prevent a contamination plume from migrating onto neighboring properties.

What is a Contamination Plume?

- A “plume” is a body of contamination that can move through soil and/or groundwater.
- USEPA has identified Chrysler to be the cause of a groundwater contamination plume that extends south from the facility underneath the McCook-Field Community.
- The plume contains TCE and other chemicals that are the natural breakdown products of degrading TCE.

How Can Exposure Occur?



VAPOR INTRUSION

Contaminants of Concern

ATSDR
AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY

TRICHLOROETHYLENE
CAS # 79-01-6

Division of Toxicology ToxFAQs™ July 2003

This fact sheet answers the most frequently asked health questions (FAQs) about trichloroethylene. For more information, call the ATSDR Information Center at 1-888-422-8737. This fact sheet is one in a series of summaries about hazardous substances and their health effects. This information is important because this substance may harm you. The effects of exposure to any hazardous substance depend on the dose, the duration, how you are exposed, personal traits and habits, and whether other chemicals are present.

HIGHLIGHTS: Trichloroethylene is a colorless liquid which is used as a solvent for cleaning metal parts. Drinking or breathing high levels of trichloroethylene may cause nervous system effects, liver and lung damage, abnormal heartbeat, coma, and possibly death. Trichloroethylene has been found in at least 852 of the 1,430 National Priorities List sites identified by the Environmental Protection Agency (EPA).

What is trichloroethylene?

Trichloroethylene (TCE) is a nonflammable, colorless liquid with a somewhat sweet odor and a sweet, burning taste. It is used mainly as a solvent to remove grease from metal parts, but it is also an ingredient in adhesives, paint removers, typewriter correction fluids, and spot removers.

Trichloroethylene is not thought to occur naturally in the environment. However, it has been found in underground water sources and many surface waters as a result of the manufacture, use, and disposal of the chemical.

What happens to trichloroethylene when it enters the environment?

- Trichloroethylene dissolves a little in water but it can remain in ground water for a long time.
- Trichloroethylene quickly evaporates from surface water, so it is commonly found as a vapor in the air.
- Trichloroethylene evaporates less easily from the soil than from surface water. It may stick to particles and remain for a long time.
- Trichloroethylene may stick to particles in water, which will cause it to eventually settle to the bottom sediment.
- Trichloroethylene does not build up significantly in plants and animals.

How might I be exposed to trichloroethylene?

- Breathing air in and around the home which has been contaminated with trichloroethylene vapors from shower water or household products such as spot removers and typewriter correction fluid.
- Drinking, swimming, or showering in water that has been contaminated with trichloroethylene.
- Contact with soil contaminated with trichloroethylene, such as near a hazardous waste site.
- Contact with the skin or breathing contaminated air while manufacturing trichloroethylene or using it at work to wash paint or grease from skin or equipment.

How can trichloroethylene affect my health?

Breathing small amounts may cause headaches, lung irritation, dizziness, poor coordination, and difficulty concentrating.

Breathing large amounts of trichloroethylene may cause impaired heart function, unconsciousness, and death. Breathing it for long periods may cause nerve, kidney, and liver damage.

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, Public Health Service
Agency for Toxic Substances and Disease Registry

ATSDR
AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY

VINYL CHLORIDE
CAS # 75-01-4

Division of Toxicology and Environmental Medicine ToxFAQs™ July 2006

This fact sheet answers the most frequently asked health questions (FAQs) about vinyl chloride. For more information, call the ATSDR Information Center at 1-888-422-8737. This fact sheet is one in a series of summaries about hazardous substances and their health effects. It is important you understand this information because this substance may harm you. The effects of exposure to any hazardous substance depend on the dose, the duration, how you are exposed, personal traits and habits, and whether other chemicals are present.

HIGHLIGHTS: Exposure to vinyl chloride occurs mainly in the workplace. Breathing high levels of vinyl chloride for short periods of time can cause dizziness, sleepiness, unconsciousness, and at extremely high levels can cause death. Breathing vinyl chloride for long periods of time can result in permanent liver damage, immune reactions, nerve damage, and liver cancer. This substance has been found in at least 616 of the 1,662 National Priority List sites identified by the Environmental Protection Agency (EPA).

What is vinyl chloride?

Vinyl chloride is a colorless gas. It burns easily and it is not stable at high temperatures. It has a mild, sweet odor. It is a manufactured substance that does not occur naturally. It can be formed when other substances such as trichloroethane, trichloroethylene, and tetrachloroethylene are broken down. Vinyl chloride is used to make polyvinyl chloride (PVC). PVC is used to make a variety of plastic products, including pipes, wire and cable coatings, and packaging materials.

Vinyl chloride is also known as chloroethene, chloroethylene, and ethylene monochloride.

What happens to vinyl chloride when it enters the environment?

- Liquid vinyl chloride evaporates easily. Vinyl chloride in water or soil evaporates rapidly if it is near the surface.
- Vinyl chloride in the air breaks down in a few days to other substances, some of which can be harmful.
- Small amounts of vinyl chloride can dissolve in water.
- Vinyl chloride is unlikely to build up in plants or animals that you might eat.

How might I be exposed to vinyl chloride?

- Breathing vinyl chloride that has been released from plastics industries, hazardous waste sites, and landfills.
- Breathing vinyl chloride in air or during contact with your skin or eyes in the workplace.
- Drinking water from contaminated wells.

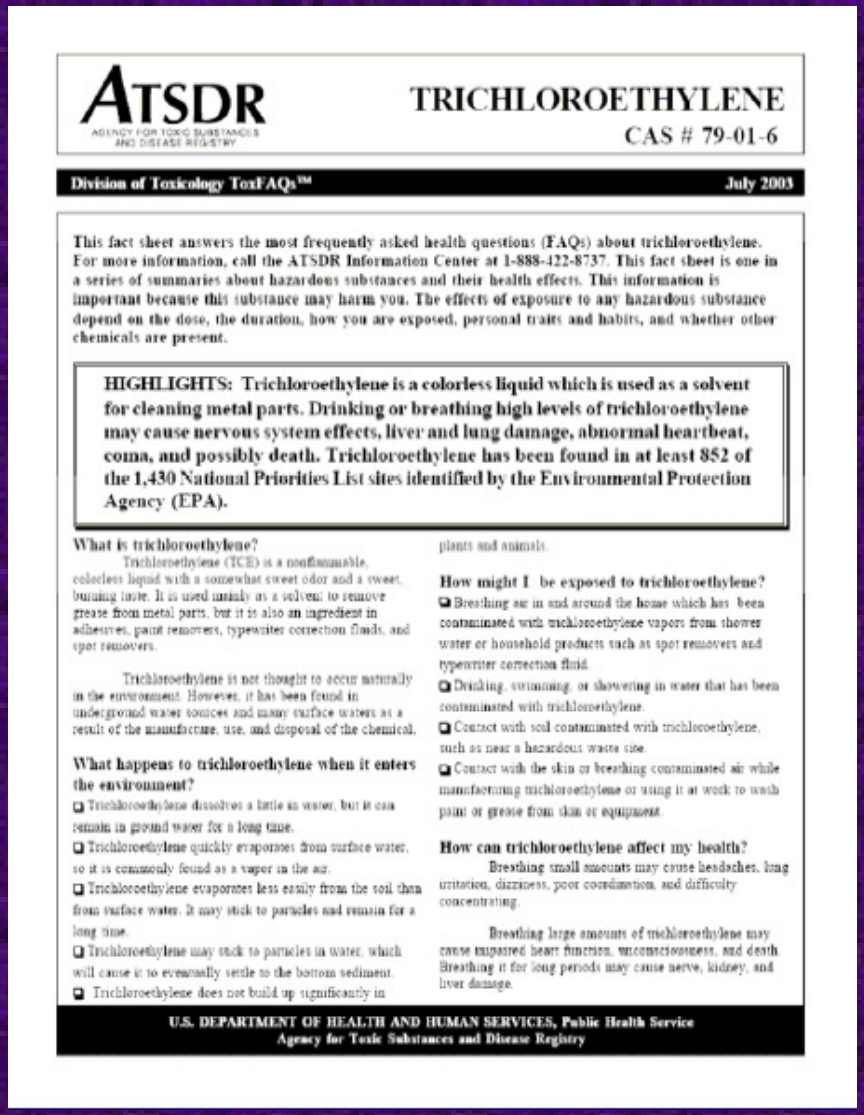
How can vinyl chloride affect my health?

Breathing high levels of vinyl chloride can cause you to feel dizzy or sleepy. Breathing very high levels can cause you to pass out, and breathing extremely high levels can cause death.

Some people who have breathed vinyl chloride for several years have changes in the structure of their livers. People are more likely to develop these changes if they breathe high levels of vinyl chloride. Some people who work with vinyl chloride have nerve damage and develop immune reactions. The lowest levels that produce liver changes, nerve damage, and immune reactions in people are not known. Some workers exposed to very high levels of vinyl chloride have problems with the blood flow in their hands. Their fingers turn white and hurt when they go into the cold.

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, Public Health Service
Agency for Toxic Substances and Disease Registry

TRICHLORETHYLENE



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U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, Public Health Service
Agency for Toxic Substances and Disease Registry

- Used as a solvent to clean metal parts. Ingredient of adhesives and paint removers
- No natural source.
- Can persist in a water environment for decades.
- High levels of exposure can cause cancers in the liver/kidney/lung as well as nerve/liver/lung damage.

VINYL CHLORIDE

ATSDR

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U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, Public Health Service
Agency for Toxic Substances and Disease Registry

- Colorless gas that is used to make PVC plastics.
- Breakdown product of deteriorating TCE
- No natural source.
- High levels of exposure can cause cancer in the liver/brain/lung/blood and nerve/kidney damage.

What has Chrysler Done?

- 2001 - Hired Earth Tech to conduct groundwater monitoring on a network of 75 on-site and off-site groundwater monitoring wells.
- 2003 – Monitoring wells located on the southern boundary of the facility showed elevated levels of TCE moving into the neighborhood.
- 2003 – Soil vapor extraction system installed to remove TCE contamination from soil below the facility.
- 2004 – Groundwater “pump and treat” system installed to remove TCE contamination from groundwater below the facility.

What has Chrysler Done?

- September 2006 – Earth Tech reported results of shallow groundwater monitoring well samples to Ohio EPA.
- Groundwater in the area is approximately 20 feet deep.
- Well located in the residential area south of the facility contained *3,900* parts per billion (ppb) of TCE.
- Drinking water standard for TCE is *5* ppb.

What has Government Done?

- October 2006 - Ohio EPA installed soil gas probes in the neighborhood to evaluate potential risk posed by vapor intrusion from the groundwater plume.
- The depth of the soil gas probes were approximately one to two feet above the depth of groundwater.
- Ohio EPA soil gas analytical results detected TCE concentrations as high as *160,000* ppb.
- November 2006 - Ohio EPA formally requested USEPA to conduct a time-critical removal action to assess whether vapor intrusion was occurring in the neighborhood.

What has Government Done?

- ATSDR and the Ohio Department of Health (ODH) established TCE screening levels for residential and commercial indoor and sub-slab air samples.

- Residential
  - indoor air screening level = 0.4 ppb
  - sub-slab screening level = 4 ppb.

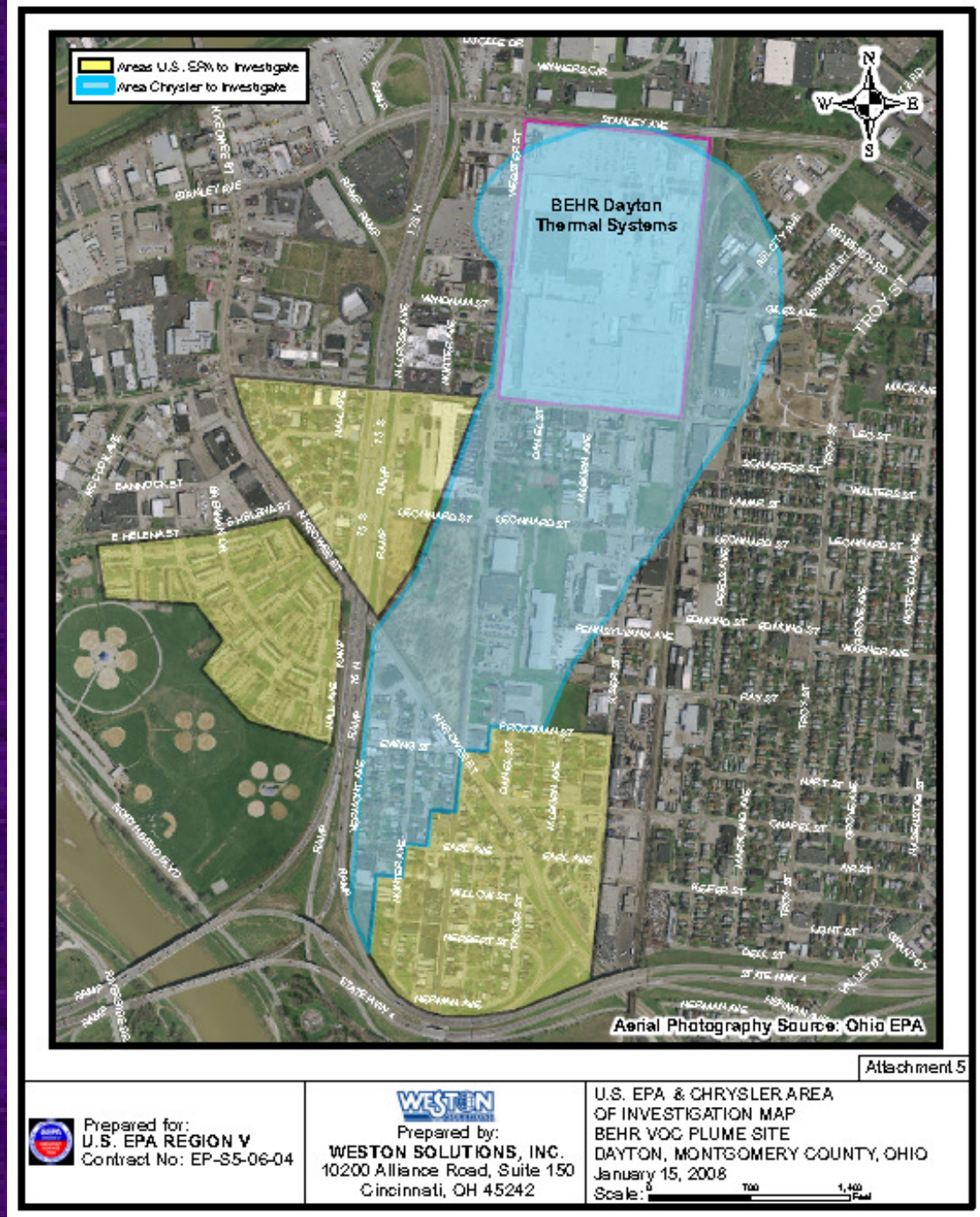
- Commercial
  - indoor air screening level = 1.7 ppb
  - sub-slab screening level = 17 ppb.

What has Government Done?

- November 2006 - USEPA collected samples from 8 residences within the residential neighborhood immediately south of the facility.
- Sub-slab samples.
  - 8 showed levels greater than screening level of 4 ppb.
  - 5 showed levels greater than the ASTDR immediate action level of 1,000 ppb.
  - Maximum TCE concentration measured was *62,000* ppb.
- Indoor air samples.
  - 8 showed levels greater than screening level of 0.4 ppb.
  - 3 showed levels greater than the ASTDR immediate action level of 100 ppb.
  - Maximum TCE concentration measured was *260* ppb.

What has Government Done?

- December 2006 - Chrysler signed an Administrative Order on Consent (AOC) to conduct a “removal action” in the neighborhood under USEPA oversight.
- The removal action involves conducting a vapor intrusion investigation and installing vapor abatement systems in residential, commercial and industrial facilities that have indoor and sub-slab air concentrations greater than the ATSDR and ODH screening levels.
- January through December 2007 – Chrysler sampled over 80 residential, commercial and industrial locations and installed 35 vapor abatement systems.



Chrysler only agrees to test homes in blue area.

USEPA considers Chrysler to be in violation of AOC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

NOV 08 2007

REPLY TO THE ATTENTION OF:

BY FEDERAL EXPRESS

Mr. Greg Rose
Chrysler Corporation
CIMS 482-00-51
800 Chrysler Drive
Auburn Hills, MI 48326-2757

Re: Chrysler's October 26, 2007 Phase II Work Plan Submittal in Response to Final Determinations of the Director, Superfund Division,

Dear Mr. Rose:

This letter responds to your October 26, 2007 correspondence to On-Scene Coordinator Steve Renninger, submitting a Revised Phase II WorkPlan and a Response to the October 15, 2007 Dispute Resolution Determination. As discussed below, the Behr VOC Plume Site Phase II Work Plan that Chrysler submitted on October 26, 2007 does not comply with the dispute resolution determination issued on October 15, 2007.

As mentioned in the October 15, 2007 determination, the Agency was not convinced by Chrysler's September 26, 2007 groundwater interpretation on the extent of the contaminant migration from the Behr-Dayton Thermal Systems LLC facility (the Behr-Dayton facility). During that September 26, 2007 meeting, Chrysler requested that the Agency present the basis for including areas outside the limits of the plume delineated by Chrysler if it determined that areas outside of that delineation fall within the Site. In response to that request, the Agency provided two maps to explain its analysis of the existing Chrysler, Ohio EPA, and City of Dayton groundwater elevation and chemical

U.S. EPA considers Chrysler to be in violation of the AOC and reserves all of its rights under the AOC and CERCLA.

The October 15, 2007 determination: 1) found that the area in Figure 2 of the U.S. EPA's August 8, 2007 correspondence is within the definition of Site under the AOC and Chrysler must amend the Phase II Work Plan to require subsurface gas extent-of-contamination sampling for the entire area; 2) that the Kiser Elementary School falls within the definition of Site under the AOC and Chrysler must modify the Phase II Work Plan to provide that it will begin quarterly sampling at that school immediately; and 3)

Removal Action Summary

- January through May 2008 – USEPA sampled 266 out of 333 locations within the southern McCook Field neighborhood.
  - 137 locations showed indoor air levels greater than the TCE screening level of 0.4 ppb.
  - 42 locations are in the quarterly sampling program.
  - 92 vapor abatement systems were installed.

- 22 of the 26 building within Parkside Homes owned by the Dayton Metro Housing Authority (DMHA) had elevated levels of TCE in indoor air.
  - Relocation of Parkside Homes had already occurred prior to June 2008.

Health Consultation

Initial United States Environmental Protection Agency Investigation

Behr VOC Plume Site
Dayton, Montgomery County, Ohio

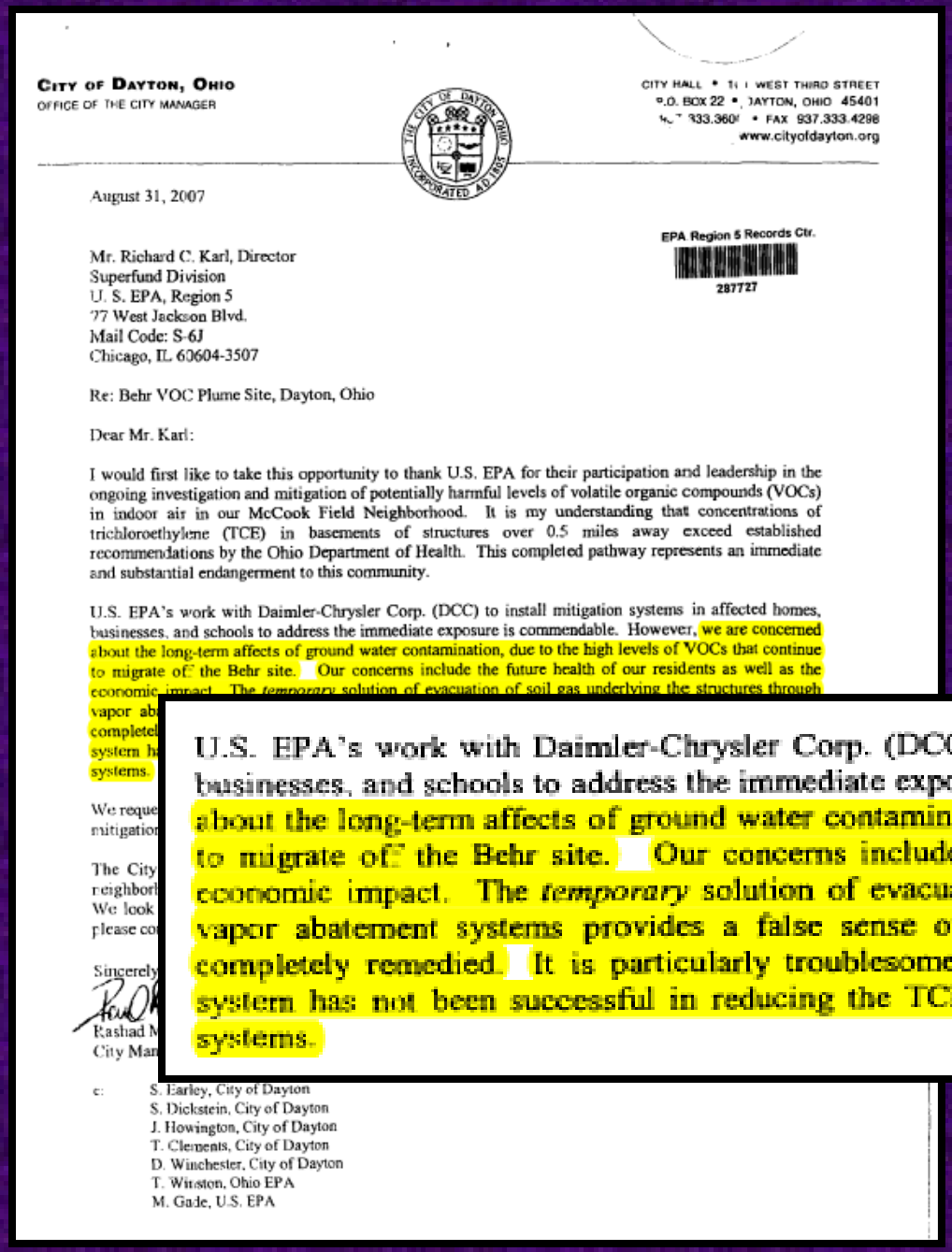
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Public Health Service
Agency for Toxic Substances and Disease Registry
Division of Health Assessment and Consultation
Atlanta, Georgia 30333

AUGUST 1, 2008

US finds Public Health Hazard

Based on the November, 2006 sampling conducted by USEPA Emergency Response Branch, HAS determined that the Behr VOC Plume site poses a ***Public Health Hazard*** to area residents due to potential exposure to chlorinated solvent contamination via vapor intrusion. Indoor air data collected by USEPA and subsequent data collected by the Chrysler Corporation in 2007 and 2008 indicate that, *at the present,* some nearby residents are likely being exposed to trichloroethylene in indoor air via the vapor intrusion route at levels that may pose a long term health threat.

City of Dayton has continuing concerns



CITY OF DAYTON, OHIO
OFFICE OF THE CITY MANAGER

CITY HALL • 1[illegible] WEST THIRD STREET
P.O. BOX 22 • [illegible]AYTON, OHIO 45401
[illegible]933.360[illegible] • FAX 937.333.4298
www.cityofdayton.org

August 31, 2007

EPA Region 5 Records Ctr.
287727

Mr. Richard C. Karl, Director
Superfund Division
U. S. EPA, Region 5
77 West Jackson Blvd.
Mail Code: S-6J
Chicago, IL 60604-3507

Re: Behr VOC Plume Site, Dayton, Ohio

Dear Mr. Karl:

I would first like to take this opportunity to thank U.S. EPA for their participation and leadership in the ongoing investigation and mitigation of potentially harmful levels of volatile organic compounds (VOCs) in indoor air in our McCook Field Neighborhood. It is my understanding that concentrations of trichloroethylene (TCE) in basements of structures over 0.5 miles away exceed established recommendations by the Ohio Department of Health. This completed pathway represents an immediate and substantial endangerment to this community.

U.S. EPA's work with Daimler-Chrysler Corp. (DCC) to install mitigation systems in affected homes, businesses, and schools to address the immediate exposure is commendable. However, we are concerned about the long-term affects of ground water contamination, due to the high levels of VOCs that continue to migrate of[illegible] the Behr site. Our concerns include the future health of our residents as well as the economic impact. The *temporary* solution of evacuation of soil gas underlying the structures through vapor ab[illegible] completel[illegible] system h[illegible] systems.

We reque[illegible] mitigatio[illegible]

The City[illegible] neighbor[illegible] We look[illegible] please co[illegible]

Sincerely,

Rashad M[illegible]
City Man[illegible]

c: S. Earley, City of Dayton
S. Dickstein, City of Dayton
J. Howington, City of Dayton
T. Clements, City of Dayton
D. Winchester, City of Dayton
T. Winston, Ohio EPA
M. Gade, U.S. EPA

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ODH found high incidence of cancer

CANCER INCIDENCE AMONG RESIDENTS OF
CENSUS TRACT 17, DAYTON, MONTGOMERY COUNTY, OHIO
1996-2005

Chronic Disease and Behavioral Epidemiology Section and the
Ohio Cancer Incidence Surveillance System
Ohio Department of Health

Final Report
August 15, 2008

Summary:
This assessment of cancer in CT 17, Dayton, Montgomery County, Ohio revealed significantly higher than expected numbers of cancer cases for the 77 observed cancers combined and cancers of the lung and bronchus (20 cases) and larynx (4

Ohio Cancer Incidence Surveillance System

Healthy Ohio

EPA
United States
Environmental Protection
Agency

Long-Term Study Begins

Behr-Dayton Thermal Systems VOC Plume Site
Dayton, Ohio September 2008

U.S. Environmental Protection Agency's work at the Behr-Dayton Thermal Systems VOC Plume site will soon move from the emergency response phase to a long-term investigation phase. Over the past year, EPA has tested 276 homes in the McCook Field neighborhood for potentially hazardous vapors that may have contaminated indoor air. The vapors are from a hazardous chemical called trichloroethylene, known as TCE, which polluted underground water (ground water) and evaporated up through the soil. If an elevated level of TCE contamination was found in the indoor air, EPA installed a mitigation system to remove the vapors (similar to a radon mitigation system). Mitigation system installation was completed with the property owners' approval and at no charge. To date, 148 systems have been installed by EPA and tested to ensure they are performing properly.

In a separate on-going project, EPA will continue to work with Chrysler, former owner of the Behr-Dayton facility, to complete sampling of an additional 113 properties and installation of 48 vapor mitigation systems in the area immediately south of the site.

In 2003, ground water beneath the Behr-Dayton facility located at 1600 Webster St., was found to be contaminated with TCE. In 2006, tests showed that the TCE-contaminated ground water had moved from the Behr-Dayton facility to the south/southwest through residential, commercial and industrial areas. This prompted more tests to find out if the soil contained vapors from the TCE. These vapors can move up through the soil and into the basements of homes and other buildings. This process is called vapor intrusion. EPA's emergency response branch handled this portion of the work to move quickly to ensure that contaminated vapors are not seeping into homes and other structures. Now that the emergency response is almost finished, a more in-depth study of the contamination will be conducted by EPA's remedial branch.

Public meeting

EPA will hold a public meeting to explain and answer questions about the proposal to place the site on the NPL, the long-term investigation and the vapor intrusion work. At the meeting, EPA will give a presentation, which will be followed by a question and answer session.

Date: Wednesday, Oct. 8
Time: 6:30 p.m.
Place: Kiser School Cafeteria
1401 Leo St.
Dayton

If you need special accommodations in order to attend this meeting, please contact Mike Joyce toll-free at:

800-621-8431, Ext. 35546,
weekdays, 9:30 a.m. - 5:30 p.m.

Information repository

You may review site documents at:

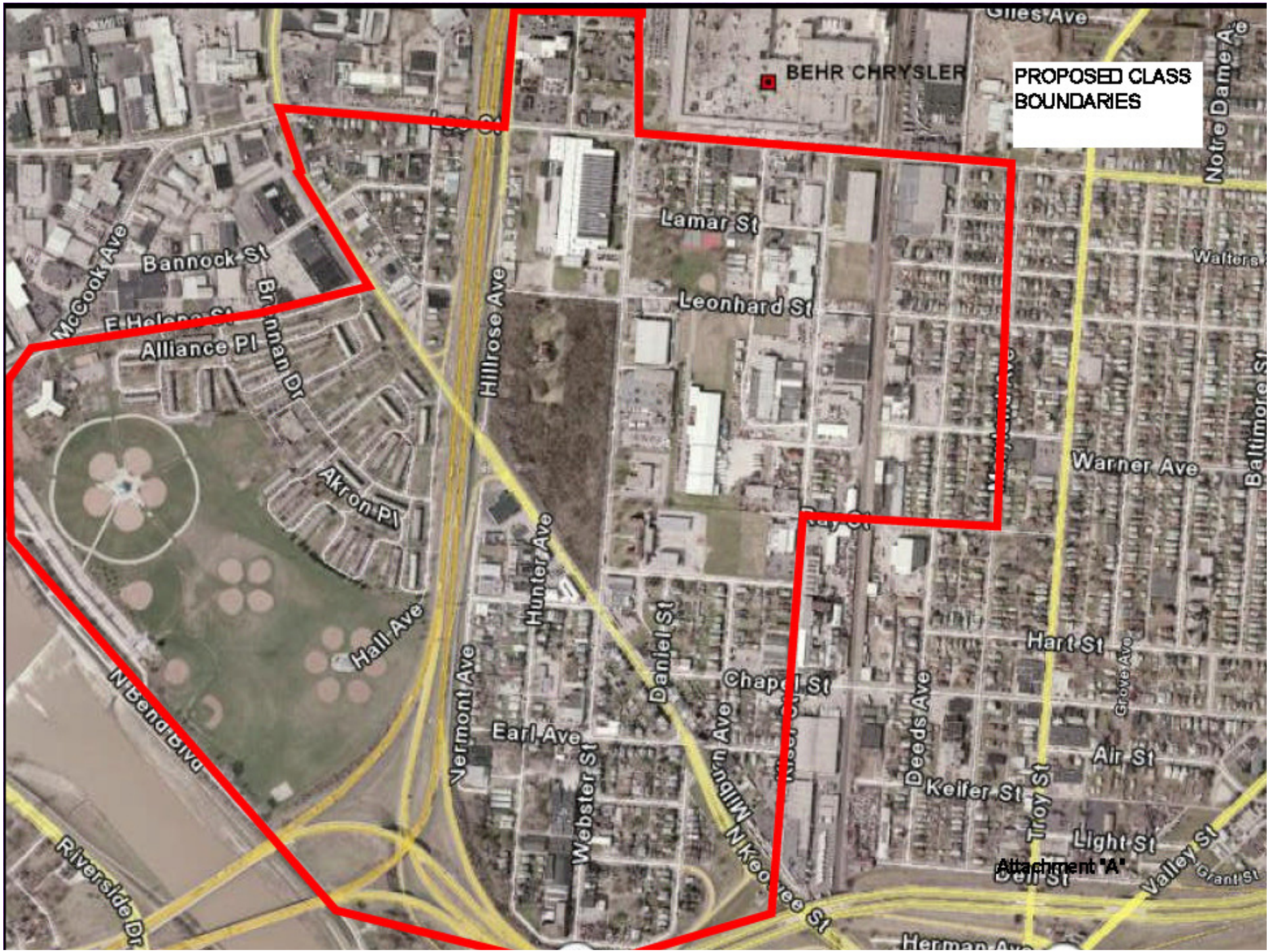
E.C. Doren Branch Library
701 Troy St.
Dayton

CLASS ACTION LAWSUITS

- Martin v. Behr (Case 3:08–CV-0326)
  - Originally filed in Montgomery County Common Pleas Court
  - Removed to federal court by Chrysler/Behr
  - Defendants include:
    - Aramark Uniform & Career Apparel Inc.
    - Chrysler/Behr
    - DAP, Inc.
    - Gayston Corporation
    - Gem City Chemicals, Inc.

CLASS ACTION LAWSUITS

- Spears v. Chrysler (Case 3:08–CV-0331)
  - Originally filed in Montgomery County Common Pleas Court
  - Removed to federal court by Chrysler/Behr
  - Defendants include only Chrysler/Behr
- First Property Group, Ltd. v. Chrysler (Case 3:08–CV-0329)
  - Originally filed in Federal Court
  - Defendants include only Chrysler/Behr


PROPOSED CLASS BOUNDARIES
BEHR CHRYSLER
Giles Ave
Notre Dame Ave
Lamar St
Leonhard St
Hillrose Ave
Bannock St
McCook Ave
Alliance Pl
Brennan Dr
Akron Pl
Hall Ave
N Bend Blvd
Riverside Dr
Vermont Ave
Hunter Ave
Daniel St
Earl Ave
Webster St
Chapel St
N Kibbey Ave
Deeds Ave
Keifer St
Troy St
Hart St
Grove Ave
Air St
Light St
Bell St
Valley St
Grant St
Warner Ave
Baltimore St
Walters
Herman Ave
Attachment "A"

How can the law protect and help the community?

- Property Value Damages
- Medical Monitoring
- Remediation / Clean-up
- Personal Injury Damage

PROPERTY VALUE DAMAGE

- Groundwater contamination plumes negatively impact values of affected and nearby properties.
- This is true even after contamination is cleaned up because of continuing “stigma” in the public perception.
- Experts can assess the impact on property value.
- Current downturn in local real estate market and economy makes the problem worse.
- Arguably, some homes have no value because they cannot be sold.

MEDICAL MONITORING

- Available if environmental exposure results in a significantly increased risk of disease.
- Goal is to finance medical screening for specific diseases that are known to be caused by the contaminants.
- Focus on helping people detect diseases earlier, so that their treatment prognosis is improved.
- Difficulty convincing persons at risk to take advantage of the opportunity.

REMEDIATION / CLEAN-UP

- Behr Site Remediation
  - Removal, bioremediation or chemical treatment of soil contamination below facility
  - Soil vapor extraction system
  - Groundwater pump & treat system
- Plaintiff Property Remediation
  - Vapor abatement system (temporary measure)
  - Soil vapor extraction system
  - Groundwater pump & treat system
  - Demolition & reconstruction with vapor barrier

PERSONAL INJURY

- Identifying persons with specific physical symptoms of disease.
- Determining history of occupation within the plume area.
- Proving causation.
- Determination of damages.