

PFAS Risks Require Due Diligence Beyond Compliance

By **Maribel Nicholson-Choice and Sven Kleinhans** (September 25, 2026, 6:13 PM EDT)

What if the most significant environmental risk in a real estate transaction is not a regulatory violation, contamination claim or enforcement action?

What if the real threat is a condition that complies with all applicable laws yet still makes lenders hesitate, insurers impose exclusions, and purchasers demand concessions?

What if the market discounts the asset's value? That scenario is becoming increasingly common.

Perfluoroalkyl and polyfluoroalkyl substances are a group of thousands of synthetic chemicals that have been used in consumer products and manufacturing processes for many years. PFAS resist heat and water.

They break down very slowly and can stay in the environment for years. As a result, PFAS are often called forever chemicals, because they persist in drinking water, soil, air and the blood of organisms, including fish, animals and humans.

The many different types of PFAS and their widespread presence in the environment create significant regulatory uncertainty, making it difficult for businesses to quantify PFAS-related risks in real estate transactions.

That uncertainty resurfaced in May, when the U.S. Environmental Protection Agency proposed retaining drinking water standards for certain PFAS while reconsidering standards for others, underscoring the evolving PFAS regulatory landscape.

Since then, PFAS-related developments have not slowed.

On Aug. 18, in *Chamber of Commerce of the U.S. v. EPA*, the U.S. Court of Appeals for the D.C. Circuit upheld the EPA's designation of perfluorooctanoic acid and perfluorooctanesulfonic acid as hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act — the federal Superfund law.

The court rejected arguments from industry groups and agreed that the EPA could make the designation based on the agency's determination that the chemicals may present a substantial danger, without



Maribel Nicholson-Choice



Sven Kleinhans

requiring certainty of harm.

Together, these developments demonstrate the increasing pressure on businesses to evaluate environmental risks beyond the traditional lens of regulatory compliance.

They also underscore the importance of a due diligence team assessing environmental business risks posed by emerging contaminants, rather than stopping at a clean Phase I environmental site assessment.

Scientific studies have linked exposure to certain PFAS compounds to potential adverse health effects, especially among vulnerable populations such as children, seniors and immunocompromised individuals.

But the number of PFAS and their widespread presence create significant regulatory uncertainty, making it difficult for businesses to quantify PFAS-related risks in real estate.

As federal and state regulators continue to study these emerging contaminants, PFAS have become a major driver of change in environmental due diligence, because they have exposed the distinction between regulatory compliance and environmental business risk.

Recent fragmented federal and state efforts to regulate PFAS have generated considerable attention from the public, industry and regulators.

For lenders, developers, investors and property owners, however, the most important lesson is not the uncertainty surrounding future regulations; it is how public perception and market uncertainty can affect asset value, financing and operations today.

Because public perception can materially affect collateral value and business operations, environmental due diligence can no longer end at regulatory compliance.

Today, significant environmental risk can exist even when it never becomes a regulatory or litigation matter.

A property can comply with all applicable environmental regulations and still pose a significant environmental business risk. Even without enforcement action or pending litigation, an environmental condition can affect value, financing, operations, reputation and transaction timing.

In short, PFAS has exposed what we refer to as the environmental risk gap.

The environmental risk gap exists when an environmental condition creates material business risk, even though no regulatory violation, enforcement action or lawsuit exists.

This is where risk allocation becomes critical. Transaction documents — including indemnities, loan documents, leases and insurance policies — should clearly state who bears the risk if a condition materially reduces the value of the real estate or significantly disrupts the business.

Traditionally, environmental due diligence focuses on identifying liability. The customary questions were:

- Is there a regulatory violation?

- Is the property contaminated?
- Do concentrations exceed applicable regulatory standards?
- Has a no-further-action letter been issued?
- Can an agency closure determination be obtained before closing?
- What are the anticipated remediation costs?
- How long will remediation take?

Traditional environmental due diligence questions remain important. However, they may no longer be sufficient to protect a transaction or investment.

For example, a school with PFAS concerns in its drinking water could face enrollment, disclosure, public relations, lender and operational risks before any litigation or agency enforcement action. In other words, a site-level condition can materially affect a transaction before an agency takes formal action.

In a growing number of transactions, the greatest environmental risk is not active enforcement action or pending litigation. Rather, it is the uncertainty around how a seemingly small but known or suspected environmental condition may evolve and materially affect financing, collateral value, redevelopment plans, insurance availability, operations or a future sale of the property.

Those risks are real even without agency action. More often, the most damaging risks create negative public perception or uncertainty about future value, financing, operations, redevelopment potential, transaction timing or marketability.

Environmental due diligence should therefore not be limited to determining whether a property complies with today's regulations. The more important question is whether an environmental condition, whether currently regulated or not, can materially affect the asset's value and the business's operations.

PFAS Regulation: Still Fragmented

Federal and state adoption of PFAS standards for drinking water is not uniform.

Some states have adopted enforceable drinking water standards, while other states continue to develop state-specific programs. Many states still rely primarily on federal requirements.

REGULATORY STATUS	REPRESENTATIVE STATES
State PFAS drinking water standards adopted	Maine, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont and Wisconsin
State-specific PFAS actions underway	Florida, California, Colorado, Connecticut, Delaware, Maryland, Minnesota, North Carolina, Ohio, Oregon, Virginia, Washington and others
Primarily reliant on federal standards	Alabama, Arkansas, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Tennessee, Texas, Utah, Wyoming and others

Source: Author compilation based on information from CDM Smith, Integral Consulting and CleanAirandWater.net.

For commercial real estate transactions, this fragmented regulatory landscape creates more than regulatory uncertainty. It also creates business uncertainty and the risk of overlooking a known or

suspected environmental condition that may later materially affect collateral value or business operations.

Returning to the example of a school with PFAS drinking water: Although no regulatory violation, enforcement action or litigation may exist, concerns about PFAS could affect enrollment, occupancy, financing, insurance availability or the property's future marketability.

In that circumstance, the question becomes whether transaction documents adequately allocate the business risk associated with that condition.

For that reason, purchasers may seek contractual protections such as environmental indemnities, escrows, environmental insurance, special representations and warranties, or other risk allocation provisions designed to address potential losses arising from a known or suspected environmental condition.

The value of those protections may become apparent even if no regulatory liability is ever established. This reality demonstrates why environmental due diligence focused solely on current compliance can miss some of the most significant risks in a business transaction.

As a result, prudent purchasers, lenders, investors and insurers increasingly look beyond traditional environmental compliance and remediation status to assess whether a known or suspected environmental condition may materially affect an asset's value or a business's operations.

Environmental Due Diligence as a Test of Value

Environmental due diligence is now more than a compliance checklist or technical review. It is also a practical analysis of environmental business risk and its potential effect on the transaction's objectives.

A transaction team should ask:

- What environmental condition is present or suspected?
- What does the condition mean to the deal?
- Can it materially affect operations, reputation, financing or project value?
- Will lenders be comfortable with it?
- Will future purchasers be comfortable with it?
- Does it affect redevelopment plans?
- Does it affect project economics?
- Does it create uncertainty that can alter investment decisions?

These are business questions, but they are increasingly central to environmental due diligence today.

Effective due diligence must evaluate not only whether a condition creates liability today, but also whether it could affect financing, insurance, future transactions, operations, redevelopment plans, exit strategy or long-term asset value.

In other words, due diligence should test value, not simply compliance. This approach aligns with a practical risk management framework that focuses on identifying, pricing, allocating, insuring and managing risk before it affects asset value or collateral performance.

Looking Beyond PFAS

PFAS may be driving today's discussion, but this lesson extends well beyond PFAS.

Vapor intrusion can raise tenant and occupancy concerns even without formal enforcement. Asbestos can significantly affect redevelopment costs and project schedules. Historic contamination can complicate financing and future transactions. Drinking water concerns can disrupt operations and seriously damage a business's reputation.

In each of these scenarios, regulatory liability may be nonexistent, but the economic impact may be substantial. This perspective matters in commercial real estate because asset value ultimately depends on financing, operations, marketability, redevelopment potential, business reputation and investor confidence.

Environmental conditions that undermine any of these factors require attention, regardless of the current regulatory framework.

Conclusion

PFAS has changed the game around environmental due diligence. It has demonstrated that regulatory compliance alone is no longer an adequate measure of environmental business risk.

A property can be fully compliant today and still present significant challenges affecting financing, redevelopment, insurance, operations, marketability, transaction timing and value.

PFAS has exposed the environmental risk gap — the disconnect between environmental regulatory compliance and environmental business risk.

For lenders, investors, developers and property owners, environmental due diligence must evolve accordingly, and test value, not simply compliance.

Maribel Nicholson-Choice is a shareholder and Sven Kleinhans is an associate at Greenberg Traurig LLP.

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