



Could Your Transaction Be Impacted By PFAS? Three Questions To Ask

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Emerging environmental risks that are uncertain and evolving require special considerations during corporate transactions. One good example of this in today's world is dealing with risks associated with PFAS, a shorthand way of referring to per- and polyfluoroalkyl substances. This family of thousands of compounds is subjected to uneven and inconsistent regulation across the country and further regulation is still evolving. This makes quantifying and evaluating potential risks difficult, but important.

Here are three questions to evaluate whether – and if so, how – you need to address risks associated with PFAS in a property or facility transaction.

1. Is your client buying or selling a [manufacturing business that could be impacted by PFAS](#)?
2. If your client is pursuing a target for which PFAS may be a concern, do the deal documents properly account for PFAS concerns?
 - Are there environmental representations that will account for potential (and perhaps hidden) PFAS risks?
 - Does the definition of “Hazardous Substances” in the deal documents include PFAS?
 - Do environmental representations account for likely future

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regulation of PFAS (with retroactive liability) in jurisdictions where it may not currently regulated?

3. If your client is pursuing a target for which PFAS may be a concern, is the environmental consultant who is tasked with due diligence responsibilities experienced and familiar with assessing PFAS risks in Phase I and Phase II environmental site assessments?

Of course, how risks are evaluated and allocated are different for every transaction, but reviewing these questions will help make sure this uncertain and evolving potential liability is properly understood and considered.