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Don't let forever chemicals ruin your deal - by Victor DeTroy

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If you've been watching the news, you may have seen the widespread contamination caused by per- and polyfluoroalkyl substances (PFAS) (also known as "Forever Chemicals.") These chemicals have been linked to various health effects including certain cancers. The EPA and New England state environmental agencies are figuring out how to regulate PFAS and it seems like new guidance and legislation is coming out every other day. As an investor, it can be daunting if you find any concentration of PFAS at your site. However, you don't have to let PFAS ruin your deal. Here are a few things to keep in mind when trying to assess the level of risk to your investment:

Is your site a potential source of PFAS?

The breadth of PFAS contamination can be staggering. Contamination can travel for miles. So far that even trace amounts have been found in deep sea fish and polar bears. It's also being found in rainwater. At times it can seem like PFAS contamination is virtually everywhere. However, numerous lawsuits have been filed against large-scale industrial/institutional producers and users of PFAS that have caused significant PFAS contamination. If your portfolio includes industrial sites or you are looking to invest in the industrial sector, it would be wise to take a careful look at the site history.

The EPA recently released a massive data set to help identify sites that may be potential sources of PFAS contamination. However, it is important to discern between sites that have known PFAS contamination and sites that have been designated as "potential" sources of PFAS contamination. With a little bit of deeper digging and research, you may be able to turn one of the "potential" sites of concern from a perceived risk into a proven minimal or non-risk. This additional information can help ease concerns that lenders and investors may have initially had.

Has your site been contaminated by an off-site source?

If you didn't cause the problem, you may just shrug your shoulders and want to wash your hands of it. However, owners may run into liability if they fail to protect certain aspects of their occupant's health and safety. If your occupants are exposed to PFAS contamination, even if you didn't cause it, you may be responsible for finding ways to mitigate that exposure. If PFAS are present in the drinking water (especially for private wells) you may be responsible for installing new filtration systems that specifically target PFAS. These filtration systems can be more expensive than your standard systems. However, there may be financial assistance available. For instance, military bases have been a major source of PFAS contamination due to the firefighting foams used during training operations. The DoD has sought to address stakeholder concerns as they assess and mitigate PFAS contamination originating from their bases. A savvy investor will do their due diligence to make sure they take advantage of available assistance from responsible parties.

Prepare For Uncertainty and Protect Yourself

When there is a single big obvious polluter with deep pockets, it makes life easy for a party seeking

damages. However, when PFAS is found in groundwater in an industrial area and there are 100 different industrial sites that could be potentially responsible parties, it's going to be quite difficult to try to unravel that Gordian Knot. In order to hedge some of the uncertainty and risk, an investor should make sure they do their due diligence before acquiring a property.

For instance, you can ask your environmental consultant to include assessment of PFAS in their Phase I Environmental Site Assessment and they will typically include it with no added cost. If you are looking to add environmental insurance on your investment, you can check the exclusions to make sure that PFAS are not excluded from the policy.

Lastly, if you run into a really sticky situation, it never hurts to get your attorney and environmental consultant on the phone to figure out the best path forward. Although there is uncertainty, you can use your investing wisdom to properly discern between a real risk and the specter of a perceived risk.

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