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Insights

PFAS AND YOUR BUSINESS: IDENTIFYING AND INVESTIGATING PFAS IMPACTS

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SUMMARY

Most businesses understand the need to conduct environmental due diligence when buying or selling real estate, but many businesses may not have a good understanding of how to investigate and mitigate the potential risk posed by the presence of PFAS compounds. EPA is expected to add certain PFAS compounds to the list of "Hazardous Substances" under CERCLA later this year, and there are state and federal investigations into PFAS impacts at sites going on across the country, so businesses should begin to evaluate their potential interaction with these chemicals.

The following presents a discussion of some methods and concepts that, if applied correctly, can reduce the risk that future PFAS regulation will undermine the work that organizations are executing in response to the items described in EPA's PFAS Strategic Roadmap. We also provide information regarding the necessary background regarding due diligence procedures for PFAS substances.

DUE DILIGENCE CONSIDERATIONS

Presently, an evaluation of potential PFAS impacts is not required in order to satisfy the All Appropriate Inquiries Standard ("AAI") under CERCLA and state equivalents.

However, once EPA has listed PFOA, PFOS, and any other PFAS compounds as "Hazardous Substances" under CERCLA, those compounds are within scope of AAI and must be considered going forward. In anticipation of these changes, PFOA and PFOS (at a minimum) should be evaluated as part of a company's due diligence when purchasing property.

CONCEPTUAL SITE MODEL DEVELOPMENT

Once a site is classified as "impacted" by PFAS, developing a robust conceptual site model ("CSM") is a critical next step. This CSM provides a strategic framework to guide future decisions regarding the management of the site, support stakeholder interactions, and inform the design of future

remedial actions if required at a later date. Given the importance of the CSM to the overall response process and the propensity for PFAS to migrate in the environment, the CSM should identify the following:

- Historical uses of the site that may have resulted in PFAS releases;
- Detailed evaluation and interpretation of site hydrogeology and hydrology influencing PFAS migration;
- Historical remedial efforts performed in the vicinity of the PFAS plume;
- Available PFAS data from the site and any adjacent sites;
- Potential and identified regional sources of PFAS to the environment;
- Ecological and human health receptors; and
- Nearby property ownership and use.

In today's data-rich environment, much of the information needed to create a CSM is available through previous environmental investigations conducted at or near the site, regional databases, and other sources. Leveraging this existing data by conducting desktop reviews using advanced interpretation methods at the beginning of an investigation planning effort provides opportunities to target the investigation, thereby reducing cost and generating data that supports a well-informed strategy designed to achieve the most favorable outcome possible.

As EPA implements the TSCA data gathering rule, the volume of PFAS-related information available to support CSM development, investigation and response action planning will increase exponentially. For additional information regarding the TSCA data gathering rule, please refer to BCLP's previous Client Alert.

When used to its full potential, this data will help organizations chart a course toward compliance and risk mitigation prior to generating new data. For example, a clear presentation of regional PFAS impacts and potential sources to the environment can be valuable in planning site-specific data collection efforts and communicating risks to internal stakeholders. This information will also be valuable in evaluating historic and ongoing PFAS impacts during the due diligence process.

Summarizing and converting the information described above into a consumable format may seem like a daunting task; however, new technologies are being employed to evolve from conventional "written" or "static" CSMs to dynamic CSMs hosted on a digital platform. This allows for the efficient use of existing and new datasets as projects are implemented.

DIGITAL SITE MANAGEMENT TOOL

Burns & McDonnell has developed a Digital Site Management Tool ("DSMT") to develop CSMs to support some of the nation's most complex PFAS sites. This web-based tool allows users to seamlessly view disparate PFAS datasets and hydrogeologic data across space and time to make real-time interpretations, identify trends that are indicative of PFAS sources and transport routes, understand the specific processes affecting PFAS fate and transport in the environment, and determine potential exposure scenarios.

For example, Burns & McDonnell's team of stratigraphers has identified specific hydrostratigraphic units at complex PFAS sites that function as barriers and conduits to groundwater migration and therefore guide the transport of PFAS in the environment. Once identified, these units became the focus of data collection and their orientation informed the placement of the monitoring well network.

By relying heavily on the subsurface lithology, the results of the site investigation and the foundation of the CSM provide interpretations about contaminant fate and transport that can be easily repurposed to make interpretations or predictions about the distribution of additional PFAS should they become regulated at future date. This interpretation is captured within the DSMT and becomes part of the living CSM that evolves along with an organization's response to PFAS. The DSMT serves as a data management system with maps and dashboard reporting capabilities that can be used to support technical discussions and decision making as well as stakeholder interactions regarding this complex subject.

CONCLUSION

Once potential PFAS impacts have been identified, investigating and characterizing those impacts is essential. Organizing and managing that information in a real-time, digital format provides greater flexibility and the ability to more effectively manage future discussions with regulatory agencies, investors, insurance providers, and other key stakeholders. Businesses should evaluate and implement a site modeling plan and dynamic platform that will adapt with their long-term business needs.

If you would like additional information regarding the PFAS Strategic Roadmap, or if you would like assistance in evaluating PFAS substances in any capacity, please contact Tom Lee and John Kindschuh at BCLP or Brian Hoye and John Hesemann at Burns & McDonnell.

RELATED PRACTICE AREAS

- PFAS Team
- Environment

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