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ARTICLE



Environmental Diligence in the Era of PFAS: The Pitfalls of Simply Ordering the Phase I

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The article explores issues attorneys must consider when evaluating whether a standard Phase I environmental site assessment (ESA) provides a sufficient, or even appropriate, scope of environmental diligence for clients buying, leasing or financing a property or business. Phase I ESAs exclude a number of issues of potential concern, including regulatory compliance, emerging contaminants such as per- and polyfluoroalkyl substances (PFAS), and asbestos, lead, radon and wetlands.

Whether to add non-scope considerations to the Phase I ESA is a business decision to be made on a case-by-case basis. Attorneys should anticipate future marketability concerns associated with non-scope matters, such as the impact of the proposed federal regulation of some PFAS as Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) hazardous substances and as substances subject to National Primary Drinking Water Regulations.

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CONTACTS

For more information, contact your Katten attorney or any of the following attorneys.



Nancy J. Rich
+1.312.902.5536
nancy.rich@katten.com

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