

PFAS RISK IN PROJECT DEVELOPMENT: A DUAL- BRANDED PERSPECTIVE

Analyzing environmental hazards affecting construction, financing and eventual disposition

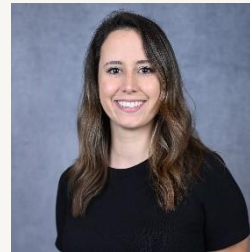


SPEAKER INTRODUCTIONS



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INTRODUCTION



UNDERSTANDING PFAS RISK IN DEVELOPMENT



PFAS as Emerging Regulatory Concern

PFAS chemicals have become a central regulatory focus due to their environmental persistence and health risks.



Impact on Development Lifecycle

PFAS contamination affects acquisitions, construction, financing and disposition phases in project development.



Strategic Risk Management

Integrating PFAS risk mitigation into strategic planning helps ensure regulatory compliance and reduces liability exposure.



REGULATORY LANDSCAPE



FEDERAL AND STATE REGULATIONS

Federal PFAS Regulations

Federal agencies like EPA enforce PFAS regulations under CERCLA, TSCA, EPCRA and SDWA frameworks.

PFAS Strategic Roadmap

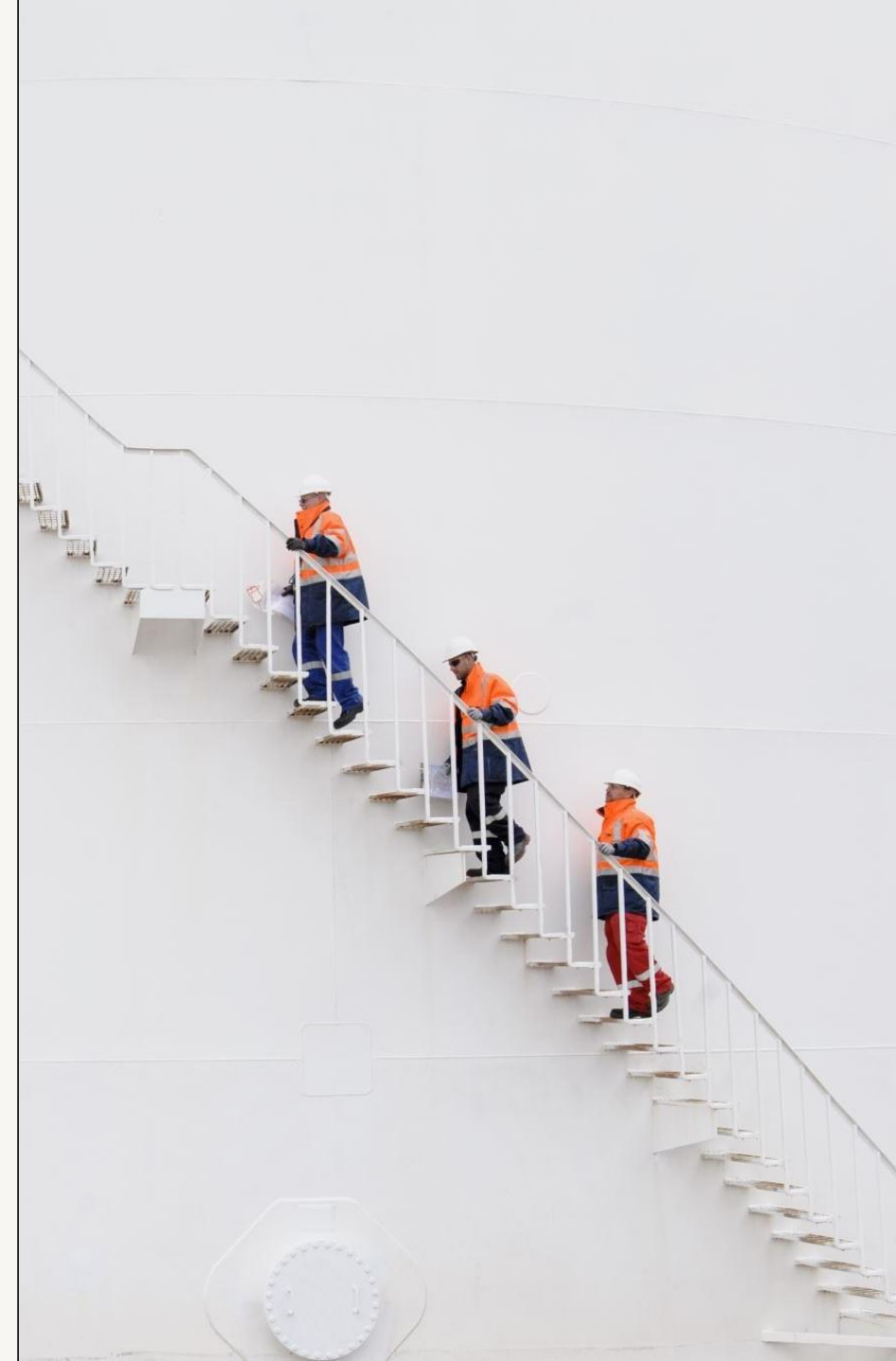
EPA's 2021 PFAS Strategic Roadmap highlights stringent regulatory actions including reporting, toxic release inventory and MCLs.

CERCLA Hazardous Designation

In 2024, CERCLA designated PFOA and PFOS as hazardous substances, expanding liability for owners and operators.

State-Level Regulation Variability

States like New Jersey and Massachusetts impose stricter MCLs requiring tailored compliance strategies across jurisdictions.





TRANSACTIONAL IMPACTS



DUE DILIGENCE AND DEAL STRUCTURING

PFAS in Environmental Assessments

Phase I ESAs often exclude PFAS evaluation beyond PFOA and PFOS, but best practices recommend including it to identify potential contamination risks.

Risk Indicators and Further Investigation

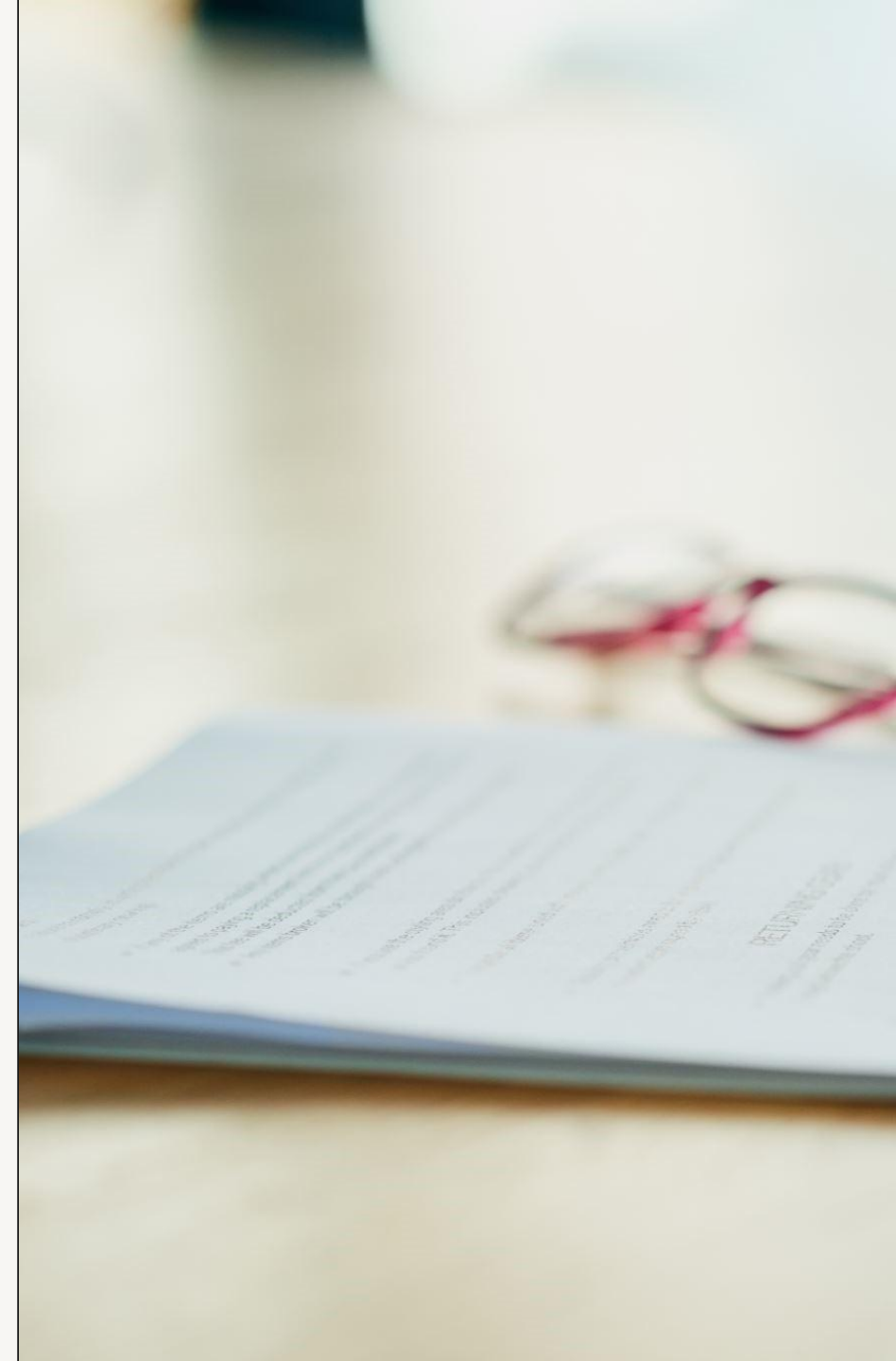
Red flags like AFFF use, proximity to airports, or industrial activity require Phase II ESAs for detailed PFAS evaluation.

Contractual and Regulatory Strategies

Deal structuring includes PFAS indemnities, cost-sharing, and engagement with regulators to clarify cleanup obligations and liability.

Financial Protections and Clauses

Use of escrows, insurance, and walk-away clauses help manage uncertainties and financial risks related to PFAS contamination.





FINANCIAL AND DEVELOPMENT CONSIDERATIONS



LENDER PERSPECTIVES AND CONSTRUCTION RISKS

Lender Caution and Concerns

Lenders are cautious about PFAS due to liability, declining property values, and regulatory uncertainties affecting financing decisions.

Construction Phase Risks

PFAS contamination can emerge during construction activities like dewatering, requiring unexpected sampling and treatment.

Clarifying Responsibilities

Clear definition of legal, technical, and construction team responsibilities prevents disputes and ensures compliance with PFAS management.

Proactive Development Strategy

Early PFAS screening and a Contaminated Material Management Plan help reduce delays and cost overruns in projects.





STRATEGIC RISK MANAGEMENT



MITIGATION STRATEGIES AND KEY TAKEAWAYS

Proactive Risk Management

Recognize PFAS as a core business risk and address it proactively through early regulatory engagement and due diligence.

Robust Contractual Protections

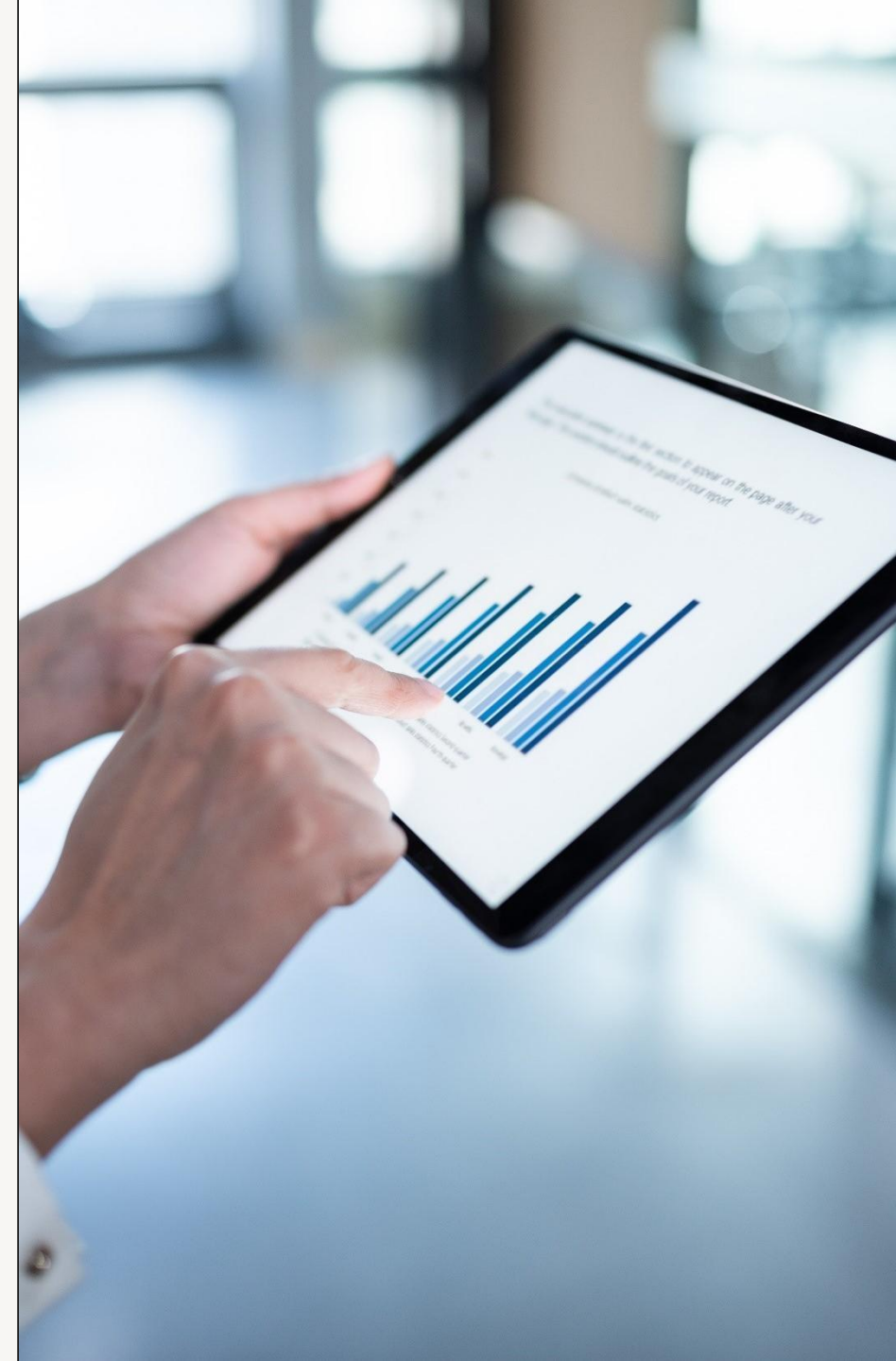
Implement strong contractual safeguards and insurance strategies to mitigate PFAS-related liabilities effectively.

Integrated Development Approach

Incorporate PFAS considerations throughout the development lifecycle to ensure thorough risk mitigation and compliance.

Collaboration and Communication

Foster interdisciplinary collaboration and clear stakeholder communication to navigate regulatory challenges smoothly.



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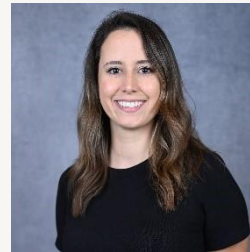
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