

Navigating the Impact of EPA Designations

In a recent ruling, the Environmental Protection Agency (EPA) designated perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). PFOA and PFOS are two polyfluoroalkyl substances (PFAS), a group of synthetic chemicals used in industry and consumer products that have been linked to cancer, birth defects and other health issues.

This ruling went into effect on July 8, 2024, and now has implications on property acquisitions going forward.

NFP can help you navigate the impact of this recent designation and its effects on your business.

If you're working with a borrower and the Phase I report identifies the potential presence of PFAS, a lender liability policy may be a solution. Lender liability policies provide banks and commercial mortgage lenders vital protection against pollution risks in their real estate loan portfolios. The coverage responds in the event of a borrower default and contamination discovery.

Impact on the Lending Process

The EPA designations have implications for property acquisitions closing on or after July 8.

The environmental due diligence required to meet CERCLA's "all appropriate inquiries" standard for liability protection, which is typically performed via Environmental Site Assessments (ESA), will need to include consideration of PFOA and PFOS.

With the EPA designations, we anticipate that many Phase I reports will now identify the potential presence of PFAS, thereby triggering many lenders to request the completion of a Phase II report before lending is considered. Many organizations are concerned that this will add another hurdle for commercial lending in an already difficult market.

A Potential Solution

If you're working with a borrower and the Phase I report identifies the potential presence of PFAS, a lender liability policy may be a solution.

Lender liability policies provide banks and commercial mortgage lenders vital protection against pollution risks in their real estate loan portfolios. The coverage responds in the event of a borrower default and contamination discovery. Lender policies take borrower financials into consideration when they are being underwritten so it is common to have a policy issued with no significant exclusions.

Benefits for Lenders

A lender liability policy can be used in lieu of a Phase II requirement, environmental escrow account, credit waiver and, in some cases, a Phase I ESA. If there is a default and discovery of a pollution condition, the policy can be triggered and will pay the estimated remediation cost or the remaining balance of the loan, whichever is less. This provides critical protection that can keep loan activity – and revenue opportunities – moving forward.

To learn more about this new ruling and get expert solutions, contact NFP's Environmental Practice.

The NFP team stands ready to help you navigate the new regulations, answer your questions and explore options that align with your objectives.



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