Bloomberg BNA

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Environmental Due Diligence Guide Report™

An Insider's Perspective

Trends in 2012: Fewer Big Deals, Private Cleanup Oversight, Fracking Impacts

Trends to watch in 2012 include a sharp drop in large mergers and acquisitions activity, an environmental risk and association management director told BNA April 9.

''The winds of change are creating real challenges and opportunities in the commercial real estate and financial services marketplaces,'' Dean Jeffery Telego, with the Alexandria, Va.-based Environmental Bankers Association, said.

Mergers and acquisitions activity involving commercial and industrial real estate valued at $1 billion or more dropped 45 percent in the first quarter of this year, the lowest figure since 2008, Telego, who also heads up RTM Communications Inc., said. That presents a stark contrast to 2011, when the number of such deals was up about the same percentage, he noted. Public offerings also are down in 2012, about 15 percent from the same period last year, according to Telego, referencing Dealogic market research.

This is occurring in an economy in which ''corporate industry is looking to deploy some ... $2.2 trillion in cash,'' Telego noted. According to the 2012 Global Outlook & Review produced by Dow Jones Private Equity Analysis/Private Equity News, he said, ''they are doing so by eschewing big deals and instead engaging in acquisitions of middle market companies with annual revenues of $1 billion or less.''

Brownfield Opportunities

Against this backdrop, with an estimated 22,400 properties in distress, there is ''a record $1.4 trillion of maturing commercial real estate debt coming due over the next three to five years,'' according to Telego. Most of the problematic loans written between 2005 and 2007 are expected to mature between now and 2013, he said. These property values depressed an average of 42 percent, he noted, and have a loan to value ratio of ''at least 130 percent,'' meaning debt liability exceeds the value of the property.

''For certain players in the distressed asset marketplace that includes brownfields, this presents opportunities whether it is with renewable energy projects or contaminated property transactions for redevelopment,'' Telego suggested.

Private Oversight of Cleanups

Meanwhile, facing reduced budgets, more states have turned to environmental professionals to help oversee the cleanup of contaminated properties. How the role of such state-deputized professionals will develop is another trend to watch, according to Telego.

Currently, he said, between 10 and 12 states use some form of licensed professionals either through the operation of law or in a less formal manner. Massachusetts began this trend in 1983, he said, followed by Connecticut in 1995. In New Jersey, an interim program permitting private professionals to perform site remediation takes permanent effect May 12. Another 10 states have in place less formal programs for deputizing private professionals to oversee work at contaminated sites, he said.

These professionals face a variety of challenges, including their evolving roles and responsibilities. One issue that will be interesting to track, Telego said, will be the depth and breadth of their authority and, by extension, the extent of their liability related to overseeing the enforcement of remedial investigations, deed restrictions, release reporting, and property transfers.

Vapor intrusion investigations and remediation represent another area in which licensed professionals increasingly will be expected to participate. Vapor intrusion has tuned out to be a much more complicated issue than originally was anticipated, Telego said. ''The Environmental Protection Agency and other regulatory bodies are starting to ratchet up their vapor intrusion activity,'' Telego noted. EPA and the states appear to be relying less on modeling and more on empirical data from the sampling and analysis stage of site investigation through the establishment of mitigating systems and use of institutional and engineering controls, he added.

The bottom line, he said, is stricter vapor intrusion requirements and standards may be coming, leading to more testing and mitigation. This, in turn, may intensify the due diligence process and potentially make it more expensive.

Fracking Watch

One of the most hotly debated issues in the marketplace today is hydraulic fracturing, also known as fracking, Telego continued. Currently, he said, there are about 1.2 million wells that have been drilled in the United States.

The potential for regulation of fracking is an area to watch because of the effect environmental compliance may have on the industry and real estate transactions, including the price of deals involving drilling leases, Telego said.

Although fracking has been used to extract shale gas in the United States since the 1940s, Telego said, concerns over whether it materially is affecting groundwater and drinking water safety have arisen in the last few years.

So far, a correlation between fracking and harmful exposure to chemicals has not been proven, Telego said. However, he continued, an EPA study on fracking's impact on drinking water is expected shortly.

Meanwhile, states such as Arkansas, Louisiana, Michigan, Montana, New Mexico, New York, North Dakota, Ohio, Pennsylvania, Texas, and Wyoming have enacted laws and regulations requiring oil and gas companies to comply with disclosure rules about the chemicals they use in hydraulic fracturing. New Jersey and New York currently have a moratorium on fracking.

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ISSN 1931-6615