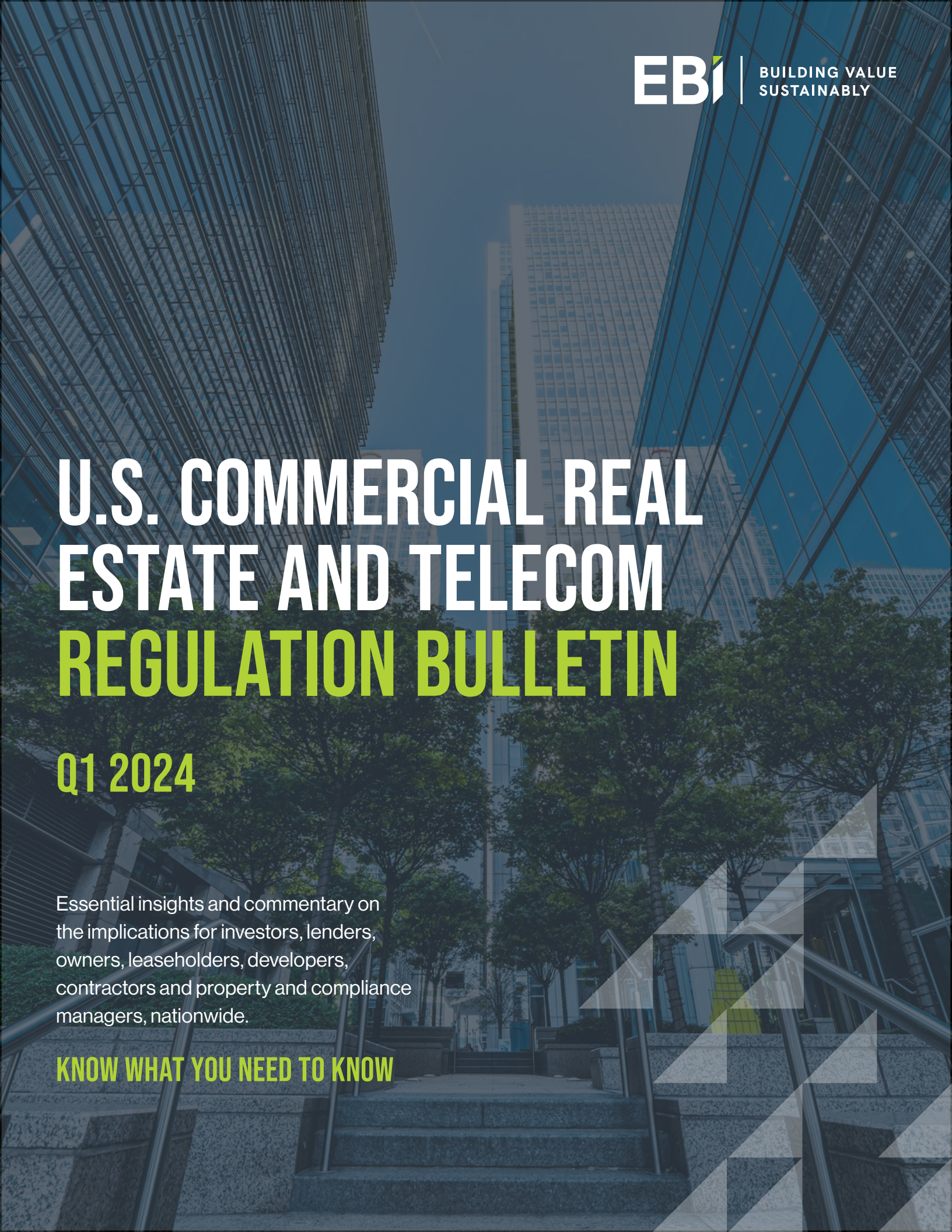

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U.S. COMMERCIAL REAL ESTATE AND TELECOM REGULATION BULLETIN

Q1 2024

Essential insights and commentary on the implications for investors, lenders, owners, leaseholders, developers, contractors and property and compliance managers, nationwide.

KNOW WHAT YOU NEED TO KNOW

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EXECUTIVE OVERVIEW

I'm delighted to introduce the first quarterly commercial real estate (CRE) and telecom regulation bulletin in the United States.

Over the years the regulatory and compliance environment has become progressively more complex and specialized, and while there were no notable new telecoms regulations or updates announced in Q1, it's a trend that's set to continue. That's why EBI has launched this U.S. CRE and telecom regulation bulletin – to bring you timely news, and essential insights and commentary, on regulatory changes as they happen, so as investors, lenders, owners, leaseholders, developers, contractors, property and compliance managers, you can stay up to date on the changes, implications, and requirements for your assets.

With a network of over 1000 technical and regulation experts located nationwide, being nationally ranked as a top three provider of commercial real estate due diligence services, and the largest provider by volume in many locations across the U.S., we believe we're best positioned to provide these insights spanning environmental, sustainability, energy, engineering, health and safety, and more.

BY NOLAN PREVITE | President & CEO, EBI

ABOUT EBI

For 35 years we've been helping investors, lenders, owners, developers, contractors and property managers mitigate risk and optimize their built facilities for maximum economic, safety and environmental value. With a network of over 1000 technical experts, we are unique in our ability to deliver high quality, responsive services across the entire real estate asset lifecycle, from rapid assessments, to advisory, to implementation and verification services, nationwide.

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SEC CLIMATE DISCLOSURE RULES, MARCH 2024 UPDATE

BY MIKE EARDLEY | Director of Energy & Sustainability, EBI

On March 6, 2024, the Securities and Exchange Commission (SEC) approved its long-awaited **Rules to Enhance and Standardize Climate-Related Disclosures for Investors.** Registrants will be required to standardize certain climate-related disclosures in public offerings. The adopted rules come in response to investors' demand for consistent and comparable climate-risk documentation. On April 4, 2024, due to several pending legal challenges from environmental groups, industry, and the states, the SEC stayed the rule to avoid regulatory uncertainty for organizations while litigation against the rule proceeds. EBI will continue to provide updates on the numerous legal challenges.

SCOPE AND OVERVIEW OF THE NEW RULES

- The adopted rules require registrants to disclose several key elements, including significant climate-related risks, efforts to mitigate or adapt to these risks, details regarding the board of directors' supervision of climate-related risks, management's involvement in handling significant climate-related risks, and any material climate-related targets or objectives material to the registrant's business, operational outcomes, or financial status.

KEY TAKEAWAYS AND IMPACT

- Implementation will occur in phases with the compliance timeline contingent upon the registrant's classification as a large accelerated filer (LAF), an accelerated filer (AF), or non-accelerated filer (NAF), smaller reporting company (SRC), or emerging growth company (EGC). The disclosure content will also play a role in determining the timeline.
- LAF and AF are required to disclose material Scope 1 and Scope 2 greenhouse gas (GHG) emissions in phases. The rules also mandate filing attestation reports covering the disclosure of Scope 1 and Scope 2 emissions. Additionally, registrants must disclose the financial implications of severe weather events and other natural conditions, encompassing costs and losses, within their financial statements.
- The rules face potential legal challenges from both environmental groups, industry, and the states. A coalition of 10 states filed a petition for review, alleging "the final rule exceeds the agency's statutory authority and otherwise is arbitrary, capricious, an abuse of discretion, and not in accordance with law".

If you would like to talk to one of our professionals about this regulation, email **info@ebiconsulting.com**

NATIONAL AMBIENT AIR QUALITY STANDARD (NAAQS) FEBRUARY 2024 UPDATE

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BY PETER HOSFORD | **Program Director, Senior Industrial Hygienist,** EBI

In February 2024, EPA announced its final rule for PM 2.5, also known as fine particulate matter. EPA is revising the level of the primary (health-based) annual PM2.5 standard from 12.0 µg/m3 to 9.0 µg/m3. EPA sets two types of NAAQS: health-based standards, called "primary standards," and standards to protect public welfare, called "secondary standards." This final rule only applies to the primary standard.

KEY TAKEAWAYS AND IMPACT

- EPA will support states and Tribes in implementing the new clean air standard. EPA expects that 99% of U.S. counties will be able to meet the revised PM2.5 annual standard with actions already in place as of 2032.
- States must develop and submit attainment plans for areas designated nonattainment for the revised primary annual PM2.5 NAAQS no later than 18 months after EPA finalizes designations. For areas in moderate nonattainment, these plans must provide for attainment as expeditiously as practicable. Areas with more severe levels of nonattainment have longer periods to achieve attainment of the new standards.
- By law, EPA cannot consider costs in setting or revising of the NAAQS standard. Consequently the cost of meeting the new limit was not considered as a factor; consequently industry/clients will see increased expense in achieving and maintaining the new standard.

SCOPE AND OVERVIEW OF THE NEW REGULATION

- PM2.5 can be emitted directly from a source such as construction sites, unpaved roads, fields, smokestacks or fires.
- The 3 main industry/client challenges are:
  - The lowered PM2.5 NAAQS has the potential to make any project that increases PM2.5 more difficult, costly, and time consuming.
  - Conducting a successful PM2.5 air dispersion modeling demonstration under the lower NAAQS will be challenging.
  - Assessing current emission sources to identify those which can or cannot meet the new standard through upgrade (filters/catalysts) and those which will require complete replacement due to age or lack of certified add on equipment.

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NEW EPA PROPOSED RULING ON PFAS (40 CFR PARTS 261 AND 271) – MARCH 2024

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BY STEPHANIE TRUEB | ESA Technical Director – Real Estate Services, EBI

On February 8, 2024, the United States Environmental Protection Agency (EPA) issued a proposed ruling for the addition of nine per-and polyfluoroalkyl substances (PFAS) to its list of hazardous constituents under the Resource Conservation and Recovery Act (RCRA). This will impact owners and operators of facilities.

SCOPE AND OVERVIEW OF THE NEW REGULATION

- **The proposed ruling applies to nine types of PFAS**, including perfluorooctanoic acid (PFOA), perfluorooctanesulfonic acid (PFOS), perfluorobutanesulfonic acid (PFBS), hexafluoropropylene oxidedimer acid (HFPO–DA or GenX), perfluorononanoic acid (PFNA), perfluorohexanesulfonic acid (PFHxS), perfluorodecanoic acid (PFDA), perfluorohexanoic acid (PFHxA), and perfluorobutanoic acid (PFBA). Studies have shown that exposure to these PFAS has adverse effects related to reproduction, development, increased risk of certain types of cancers, reduced immune system response, and increased cholesterol levels.
- If finalized, the ruling would classify these PFAS compounds as hazardous constituents under RCRA which would in turn mean these compounds would need to be considered/evaluated during RCRA assessments, further investigation, and corrective action.

KEY TAKEAWAYS AND IMPACT

- Owners and operators of facilities that handle RCRA hazardous waste, such as RCRA Treatment and storage and disposal facilities could be impacted as they will have to assess and address PFAS in any corrective actions that are imposed. This could ultimately increase investigation and corrective action costs.
- Being classified as hazardous constituents under RCRA is one step towards eventually becoming listed as hazardous waste. The EPA ruled in 2023 that two of the nine compounds (PFOA and PFOS) be classified as hazardous substances under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA). These rulings are a result of growing awareness of the health effects of PFAS exposure, and are part of the EPA's PFAS Strategic Roadmap, which was announced in 2021, outlining key actions and policies to address PFAS contamination.
- Classifying certain PFAS as hazardous constituents, and eventually as hazardous wastes, could signal future rulings of additional PFAS compounds being classified as hazardous substances under CERCLA. There are eventual implications in commercial real estate as more compounds are added to the CERCLA hazardous substance list. They will have to be evaluated and discussed in ASTM-compliant Phase I Environmental Site Assessments used by owners, lenders, and buyers when evaluating environmental risk.

If you would like to talk to one of our professionals about this regulation, email **info@ebiconsulting.com**

EPA ISSUES UPDATED RESIDENTIAL SOIL LEAD GUIDANCE FOR HAZARDOUS WASTE SITES

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BY VINNY LESINSKI | Director of Site Investigation and Remediation (SIR), EBI

On Jan. 17, 2024, the Environmental Protection Agency (EPA) issued guidance that, for the **first time in 30 years**, lowers recommended screening levels and strengthens guidance for investigating and cleaning up lead-contaminated soil in residential areas. The EPA's more stringent Soil Lead Guidance for CERCLA Sites and RCRA Corrective Action Facilities impacts single-family and multifamily property owners, operators, investors, and lenders.

SCOPE AND OVERVIEW OF THE NEW GUIDANCE

The guidance goes into effect immediately, and the new residential lead standards apply to both open and closed Resource Conservation and Recovery Act (RCRA) and Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) sites. The new residential screening levels (RSLs) reduce the levels of lead from 400 parts per million (ppm) by at least half and, in some instances 75%. The EPA guidance says:

- EPA regions should use a **residential soil lead RSL of 200 ppm**.
- EPA regions should use a **RSL of 100 ppm if an additional source of lead is identified**, such as lead water service lines, lead-based paint, and non-attainment areas where the air lead concentrations exceed National Ambient Air Quality Standards (NAAQS). The recommended RSL of 100 ppm considers aggregate lead exposure and increased risk to children living in communities with multiple sources of lead contamination.

KEY TAKEAWAYS AND IMPACT

- **Screening levels are not cleanup standards**. However, where removal actions are required, the guidance establishes a regional removal management level (RML) of 200 ppm – again, half the current 400 ppm default standard for lead in residential areas. While this update will help EPA make cleanup decisions, final cleanup standards will consider site-specific risk factors that can vary from site to site.
- EPA's decision to apply the new guidance retroactively (to both open and closed RCRA and CERCLA sites) is problematic. In short, closed RCRA and CERCLA sites are subject to being reopened for evaluation and further cleanup. Reopening closed sites can be a practical and financial nightmare, with responsible parties potentially facing substantial additional response costs to conduct further investigation and remediation.
- The EPA strongly encourages states that are authorized for RCRA Corrective Action to use these RSLs in their state-led residential soil lead cleanups. While state hazardous waste site cleanup programs vary widely, many reference or defer to EPA guidance and standards. Several states currently follow EPA guidance for lead in soil, and it's expected that more states will follow suit and soon adopt these more stringent EPA guidelines.

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ENERGIZE DENVER BUILDING ENERGY PERFORMANCE REQUIREMENTS

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BY KYLE SULLIVAN | **ESG Analyst,** EBI

In 2024, the Energize Denver Ordinance introduces building performance standards for property owners across the City of Denver. These standards address both energy and carbon building performance, mandating reporting obligations that impact building owners.

SCOPE AND OVERVIEW OF THE NEW REGULATION

- Energize Denver aims to achieve net zero greenhouse gas emissions by 2040. This initiative focuses on implementing energy performance standards for commercial and multifamily buildings over 25,000 square feet. The ordinance defines Net Zero Energy buildings as those that are highly energy efficient, all-electric, powered by renewable energy and electricity, and offer demand flexibility for the grid.
- Starting in 2024, building owners must meet or exceed determined energy use intensity (EUI) targets at three stages: 2024, 2027, and 2030. The baseline EUI targets are unique for each building generated by the city.

KEY TAKEAWAYS AND IMPACT

- Denver created an innovative "trajectory approach" to building performance standards for enclosed structures of 25,000 square feet or larger, aiming to achieve a maximum site EUI goal by 2030, with each building type targeting at least a 30% total energy saving. Interim targets 2027 ensure progress towards the 2030 goals and prevent delays in improvements. These interim goals are calculated based on each building's 2019 energy usage, aligning with a trajectory towards the 2030 standard.
- Smaller buildings, between 5,000 and 24,999 square feet, are not subject to building performance standards. However, they must meet energy consumption criteria, such as switching to all LED lights, installing solar panels, or purchasing off-site solar, to generate 20% of annual energy usage, phased in starting in 2025.

If you would like to talk to one of our professionals about this regulation, email **info@ebiconsulting.com**

NEW ASTM STANDARD E2018-24 RELEASED – JANUARY 2024

BY DIRK A. GRIFFIN | National Program Director – PCA Services, EBI

On January 1, 2024, the latest revisions to ASTM Standard E2018 Standard Guide for Property Condition Assessments: Baseline Property Condition Assessment Process were released for use in the Property Condition Assessment industry. Many lenders, owners, and investors rely on this as their own standard for engaging these reports or use it as a base to create their own scopes of work, so this will be of interest as to how it may affect their ordering and expectations.

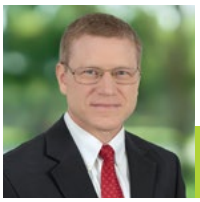
SCOPE AND OVERVIEW OF THE NEW REGULATION

- **Regular Update to the Standard:** ASTM standards are routinely updated to remain consistent with changes across various industries. The 2024 update was developed by a committee of property condition assessment (PCA) users and consultants in commercial real estate, and it incorporates the changes and evolution of the industry since the 2015 standard was developed.
- **Changes Overview:** Many changes were editorial to align the standard with style and formatting that applies to all ASTM standards. The changes also added emphasis to the collaborative efforts between the assessment users and the consultants providing them; it added emphasis to the use of specialists for critical building systems; clarified with more detail observable versus non-observable issues; and provided more structure and definition to immediate repair and long-term (replacement reserve) costs among other changes.

KEY TAKEAWAYS AND IMPACT

- **Enhanced Communication:** The new E2018-24 emphasizes communication between PCA users and consultants. No more "one-size-fits-all" assessments; rather, the revised guide encourages proactive dialogue to tailor assessments according to specific objectives.
- **Customized Scopes:** E2018-24 empowers consultants to craft custom scopes that clear traditional limits. Whether adjusting long-term cost opinions or incorporating energy audits for sustainability-minded investors, the standard encourages flexibility and innovation.
- **Role of Specialists:** The updated standard recognizes when and how specialists should be engaged for in-depth evaluations.
- **Immediate Repair and Long-Term Costs Definition:** E2018-24 expands the definition of immediate repairs to encompass imminent life-safety threats. By removing arbitrary timeframes, the standard aligns assessments with the dynamic nature of real estate environments. It also recognizes long-term costs and their implications.

If you would like to talk to one of our professionals about this regulation, email **info@ebiconsulting.com**



BY MIKE WALTHER | Director of Building Investigation and Remediation, EBI

Effective January 1, 2024, Public Act 103-0298 amends the Illinois Radon Awareness Act, specifically impacting 420 ILCS 46. This legislative update impacts landlords and tenants and aims to enhance radon awareness and empower rental/lease tenants regarding radon testing and mitigation.

SCOPE AND OVERVIEW OF THE AMENDED REGULATION

- Landlords are now required to provide a radon awareness piece to potential tenants and renewing tenants, or upon request from current tenants.
- Disclosure forms regarding known radon levels in the unit and any relevant records must be furnished to potential tenants, or upon request from current tenants.
- Tenants now have the option to conduct radon testing within the first 90 days of the lease or renewal, utilizing professional services or DIY test kits. They must then promptly share the results with the landlord within 10 days. If radon levels measure at or above 4.0 Picocuries (pCi/L), tenants may request the landlord to mitigate (remove) the radon.
- Landlords have the discretion to proceed with radon mitigation within 30 days, employing professional testing services. If this subsequent test reveals normal radon levels, no further action is necessitated, superseding the results from the tenant's test.
- Landlords are responsible for mitigating high levels of radon to decrease radon concentrations.
- In the event the landlord fails to initiate mitigation within 60 days:
  - Tenants have the option to terminate the lease without penalties.
  - Tenants may opt to have a mitigation system installed, with the landlord's consent, by a professional. The cost will be deducted from the rent in equal portions over the remainder of the lease term.

KEY TAKEAWAYS AND IMPACT

This amendment is one of many recent regulatory changes which is altering the risk and liability landscape of radon testing and mitigation associated with due diligence assessments. **The activities of state legislatures and the due diligence industry are moving in the direction of equitable testing and mitigation for all multifamily tenants, rather than a percentage of tenants.** It is essential for stakeholders to stay informed about the latest developments and to proactively plan due diligence analysis. By prioritizing radon testing and mitigation considerations, stakeholders can collectively work towards maintaining compliance with all applicable standards and regulations.

If you would like to talk to one of our professionals about this regulation, email **info@ebiconsulting.com**

BOSTON BERDO REGULATION, FEBRUARY 2024 UPDATE

BY MIKE EARDLEY | Director of Energy & Sustainability, EBI

In February 2024, the City of Boston announced that the 2024 BERDO Reporting Form is now live. This energy and carbon reporting requirement impacts building owners and their property managers, to maintain compliance and confirm energy efficient operation.

SCOPE AND OVERVIEW OF THE NEW REGULATION

- The Building Emissions Reduction and Disclosure Ordinance (BERDO) aims to reduce air pollution and greenhouse gas emissions generated by large buildings in Boston. Covered buildings include non-residential buildings over 20,000 square feet, and residential buildings with greater than 15 units. May 15, 2024 is the reporting deadline for 2023 data.
- The 2 main parts for BERDO for compliance and improvement are:
  - Conduct a Green House Gas (GHG) emissions study to determine the best way to reduce GHG emissions.
  - Implement measures to reduce GHG emissions.

KEY TAKEAWAYS AND IMPACT

- Starting in 2025, you must reduce your GHG emissions according to BERDO requirements, typically a 30-50% reduction each cycle. After 2050, a property must be "net zero". Hardship exemptions may be available for historic and affordable housing properties, based on refinancing timelines, properties with pre-existing long-term energy contracts, and demonstrated financial hardship.
- Benchmarking is achieved by gathering your property's energy and water consumption, entering data through Energy Star's Portfolio Manager, and using Energy Star's reporting tool to report to the city. GHG benchmarking is followed by Greenhouse Gas Reduction Audits, Emissions Study, and Implementation of energy and carbon reduction measures.
- Compliance requirements are achievable by reducing consumption through efficiency measures, offsetting consumption through renewable energy production, or purchasing renewable energy credits. For the first year of submission, owners must provide third party data verification. Building owners may self-certify annually afterwards; however, third party verification is required every 5 years.

If you would like to talk to one of our professionals about this regulation, email **info@ebiconsulting.com**

NEW YORK CITY LOCAL LAW 97 REGULATION, FEBRUARY 2024 UPDATE

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BY MIKE EARDLEY | Director of Energy & Sustainability, EBI

In 2024, the City of New York's Local Law 97 kicks off its inaugural building carbon emissions limits. **The law requires most buildings larger than 25,000 square feet to comply with an emissions limit schedule.**

SCOPE AND OVERVIEW OF THE AMENDED REGULATION

- Local Law 97 aims to reduce air pollution and greenhouse gas emissions generated by the built environment with a target of carbon neutrality by 2050. Covered buildings include buildings over 25,000 square feet, two or more buildings on the same tax lot that exceed a combined 50,000 square feet, and two or more condominium buildings governed by a single board of managers that exceed a combined 50,000 square feet. The reporting deadline for 2024 data is May 1, 2025.
- Carbon limits will become more stringent over determined compliance periods:
  - 2024 – 2029, 2030 – 2034, 2035 – 2039, 2040 – 2049, and 2050 – beyond
- Property type, size, and compliance year will determine each building's carbon limit.
- Local Law 97 has three requirements for building owners:
  - Meet specified emission limits
  - Retrofits to improve energy efficiency and reduce emissions if building does not meet emissions limits
  - Reporting annual emissions data to Department of Buildings that is verified by a qualified professional

KEY TAKEAWAYS AND IMPACT

- Building owners should create a compliance plan considering their specified emissions limits and create a pathway to achieve any necessary reductions.
- Failure to comply will result in various fines:
  - Failure to meet emissions limit has a maximum penalty of the difference between the building's annual emissions limit and its actual emissions, multiplied by $268
  - Failure to file a report will result in a fine of $0.50 per building square foot per month
  - Failure to provide accurate statements on a report will result in a fine of $500,000

If you would like to talk to one of our professionals about this regulation, email **info@ebiconsulting.com**

2024 AMENDMENTS TO THE MASSACHUSETTS CONTINGENCY PLAN, EFFECTIVE MARCH 1 2024

BY VINNY LESINSKI | **Director of Site Investigation and Remediation (SIR),** EBI

Amendments to the Massachusetts Contingency Plan (MCP), 310 CMR 40.0000, the Commonwealth's rules for the notification, assessment and cleanup of oil and hazardous material releases, threats of release, and disposal sites under MGL c. 21E, took effect on March 1 2024. The MCP revisions impact property owners, operators, investors, and lenders.

SCOPE AND OVERVIEW OF THE NEW GUIDANCE

The 2024 MCP goes into effect immediately and includes the following significant amendments:

- Amendments related to PFAS finalized in 2019 carried through to the 2024 MCP. However, PFAS provisions may soon become more stringent to meet new USEPA standards.
- Consideration of foreseeable climate change impacts at disposal sites.
- Amendments to existing MCP Method 1 cleanup standards and Reportable Concentrations.
- Amendments to methodologies for determining soil Exposure Point Concentrations.
- Amendments related to coal tar risk characterization.
- Provisions for disposal sites with radioactive materials.
- Clarification and modification of response action requirements related to Remedial Additives, Tier Classification and Extensions, Status Reports, Remedial Monitoring Reports, Temporary Solutions, Active Exposure Pathway Mitigation Measures, and Activity and Use Limitations.

KEY TAKEAWAYS AND IMPACT

Notably, both PFAS and climate change considerations may impact responsible parties potentially facing additional response costs to conduct further investigation and remediation.

- **PFAS:** The 2024 MCP includes standards for six per- and polyfluoroalkyl substances (PFAS) compounds in soil and groundwater – collectively PFAS6. However, these standards could change in the future as the USEPA continues its work toward developing National Primary Drinking Water Standards for PFOA, PFOS and other PFAS compounds. The current USEPA proposed drinking water standard for PFOA and PFOS individually is 4 ng/L. MassDEP has indicated that they will establish drinking water standards – and by default MCP groundwater standards protective of drinking water sources – that are at least as stringent as the final USEPA standards.

- **Climate Change:** The MCP amendments integrate foreseeable climate change considerations into the regulations for ongoing and completed remediation actions. For example, Licensed Site Professionals (LSPs) must begin "assessing current and foreseeable future site characteristics and risk." Further, the amendments add new language to expressly include the consideration of "response actions that incorporate climate change resilience" when performing cleanups under the MCP. Finally, the amendments expressly incorporate climate change considerations into the definition of a "foreseeable period of time" in the context of a Permanent Solution.

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