

Comments in response to Exposure Draft, Proposed Interpretation, Accounting for Conditional Asset Retirement Obligations, An Interpretation of FASB Statement No. 143, File Reference No. 1099-001,

\* Publicly traded corporations are regulated by the Securities and Exchange Commission (SEC), which has an extensive body of regulations in place including financial reporting. Environmental accounting and reporting are not new to the SEC. In fact, the SEC has mandated disclosure of environmental liabilities, including contingent liabilities for more than two decades through its Regulation S-K.

Item 101 (Description of Business) requires disclosure of, among other things, the material effects of complying or failing to comply with environmental requirements on capital expenditures, earnings and the competitive position of the company and its subsidiary.

Item 103 (Legal Proceedings) specifically calls out environmental liabilities as a special class of liability for disclosure purposes. Item 103(5) essentially requires registrants to report at least quarterly any "administrative or judicial proceeding ... arising under any Federal, State or local provisions ... for the purpose of protecting the environment" if the liability is (1) material to the business or financial condition of the company, (2) exceeds 10% of the company's current assets, or (3) has a governmental agency as a party (presumably in a regulatory capacity) and the probable liability is equal to or greater than \$100,000. Note that materiality is not an issue for the last two conditions. And, since the last two conditions are specific to environmental liabilities, it was clearly the intent of the SEC to treat such liabilities as a special case.

Finally, Item 303 (Management's Discussion and Analysis) requires the disclosure of environmental contingencies that might reasonably have a material effect on net sales, revenues or income from continuing operations. Additional SEC documents that have bearing on environmental accounting are: SEC Staff Accounting Bulletin 92, "Quantification of Environmental Loss Contingency"; and SEC Staff Accounting Bulletin 99: "Concept of Materiality".

\* In a 1993 study of the insurance industry, the General Accounting Office (GAO) identified significant under reporting of environmental liabilities. The GAO speculated that these liabilities were often carried on the books at minimal or zero value because companies did not know how to accurately value contingent environmental liabilities. A 1998 study by the EPA concluded that 74% of publicly traded companies failed to properly disclose environmental fines of \$100,000 or more, and 90% of companies facing environmental cleanup actions did not properly disclose those pending expenses to their shareholders. In 2001, EPA issued "Notice of Securities and Exchange Commissions Registrants' Duty to Disclose Environmental Legal Proceedings", which notified parties of their potential duty to disclose EPA-initiated enforcement actions.

\* Within the brownfield industry, the gap between actual environmental liabilities and those reported are increasingly being attributed to an informal environmental "Don't Ask / Don't Tell"

policy. "Sarbanes Oxley: Opening the Floodgates?", Brownfield News, July/August 2003, Marsh, Darlene and Lipscomb, Robert.

\* Under the "Small Business Liability Relief and Brownfields Liability Act of 2002", federal environmental liability protection is afforded to prospective purchasers of potentially contaminated property if they make "all appropriate inquiry" into the nature extent of contamination associated with the property - and its attendant liabilities.

\* The Environmental Protection Agency has tentatively defined "all appropriate inquiry" as being in conformance with the American Society of Testing and Materials (ASTM) document, "E1527 Standard Practice for Environmental Site Assessments: Phase 1 Environmental Site Assessment Process".

\* Over the past several years, ATM E1527, has been the de facto standard for defining legal due diligence in assessing liabilities associated with environmental contamination per "The Comprehensive Emergency Response, Compensation and Liability Act" (CERCLA).

\* ASTM E 2173-01, Standard Guide for Disclosure of Environmental Liabilities, is intended to apply to the Management's Discussion and Analysis (MD&A) accompanying audited and unaudited financial statements.

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\* Valuations of CERCLA environmental liabilities for accounting for conditional asset retirement obligations should be in accordance with ASTM E 2173-01, Standard Guide for Disclosure of Environmental Liabilities.

\* A due diligence assessment of the existence, nature and extent of CERCLA environmental liabilities for accounting for conditional asset retirement obligations should be assessed in accordance ASTM E1527 "Standard Practice for Environmental Site Assessments: Phase 1 Environmental Site Assessment Process".

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