Letter of Comment No: 28 File Reference: 1099-001

August 2, 2004

Ms. Suzanne Bielstein Technical Director Financial Accounting Standards Board 401 Merritt 7 P. O. Box 5116 Norwalk, CT 06856-5116

Re: File Reference 1099-001
Accounting for Conditional Asset Retirement Obligations an interpretation of FASB Statement No. 143.

Dear Ms. Bielstein:

JP Morgan Chase & Co. appreciates the opportunity to comment on the Financial Accounting Standards Board ("FASB") June 17, 2004 Exposure Draft of the Proposed Interpretation, "Accounting for Conditional Asset Retirement Obligations—an interpretation of FASB Statement No. 143" (the "ED").

We appreciate the Board's effort to eliminate the diversity in practice that exists in regards to the recognition and measurement of certain conditional asset retirement obligations. However, we disagree with the Board's underlying premise that conditional asset retirement obligations meet the definition of a liability. With respect to asbestos clean-up requirements, the legal obligation is only triggered upon disturbance of the asbestos. Therefore, no liability exists absent the entity's intent to disturb it. Accordingly, we do not support the conclusion that the uncertainty surrounding the timing and method of settlement should be factored into the measurement of the liability. Rather, we believe it would be more appropriate not to recognize the liability.

Notwithstanding the question of whether recognition is appropriate, it is also unclear as to whether the ED would remedy the diversity that currently exists in practice. Under the ED, "an entity would be required to recognize a liability for the fair value of an asset retirement obligation that is conditional on a future event if the liability's fair value can be reasonably estimated [emphasis added]." The existence of the conditional future event may, in most cases, preclude an entity from reasonably estimating the liability's fair value. The ED acknowledges that certain of these obligations may be less than probable of occurrence. Assuming an event is not probable of occurring and there is considerable uncertainty as to the timing and method of resolution if the event were to occur, it is difficult to imagine developing a set of assumptions that would lead to a reasonable estimate of the fair value of the obligation. As a result, most entities will

argue that the liabilities are not reasonably estimable. For those that do attempt to estimate the liability, it is unlikely that these estimates will have a high level of comparability.

Finally, the significant judgments involved in measuring these liabilities, and the fact that the underlying assumptions are largely controlled by the entity, may lead to situations in which significant adjustments are recognized solely from changes in management's intent. These highly subjective adjustments are less likely to occur if an obligating event that allows entities to reasonably estimate the timing and amount of future cash outflows triggers liability recognition.

In summary, we agree that the fair value of a liability should be recorded, but only when a liability exists that can be reasonably measured. We believe that certain of the "conditional" events envisioned by the Board either do not meet the definition of a liability or cannot be reasonably measured. Therefore, we question whether the ED will result in improved financial reporting. A more detailed response can be found in the attached exhibit.

If you have any questions or would like to discuss our comments, then please do not hesitate to contact David Morris (212) 648-0377 or me at (212) 270-7559.

Regards,

Issue 1: The Board concluded that the uncertainty surrounding the timing and method of settlement should not affect whether the fair value of a liability for a conditional asset retirement obligation would be recognized but rather, should be factored into the measurement of the liability. Do you agree with the Board's conclusion? If not, please provide your alternative view and the basis for it.

Response:

We do not agree with the Board's conclusion. First, we disagree with the Board's underlying premise that certain conditional asset retirement obligations meet the definition of a liability. In the case of asbestos, we do not agree that the mere existence of asbestos is the triggering event that requires the recognition of a liability simply because a building cannot last forever. Instead, we believe that a liability exists only when the asbestos is disturbed, which is consistent with the legal statute. The National Emissions Standards for Hazardous Air Pollution (NESHAP) and certain related Q & A documents published by the United States Environmental Protection Agency (EPA) indicates that the legal obligation arises upon the disturbance of the asbestos, not the existence of the asbestos. Accordingly, the legal obligation to remove asbestos does not occur until demolition or renovation is initiated. Until the entity determines it will take such an action, no event has occurred that obligates the entity to remove the asbestos. Absent the occurrence of an obligating event, there is no recognizable liability under FASB Concepts No. 6, *Elements of Financial Assets* (CON 6).

Even if this obligation met the definition of a liability, we would not agree with the Board's conclusion. Instead of focusing on the recognition question, the Board recommends considering the uncertainty surrounding the timing and method of settlement in the fair value measurement of the liability. We agree that there are situations in which liabilities can be reasonably estimated when there is some degree of uncertainty surrounding the timing and method of settlement. However, we can also envision many situations when the uncertainties are so great as to make such an estimate little more than a guess. For example, if an entity has no plans in the foreseeable future to renovate or demolish a building, it would have no basis for reasonably estimating its ultimate liability. Factors that must be considered are whether the entity will ultimately remedy the problem itself or sell the building. If the entity does not sell the building, it may be able to defer extensive renovation for an indeterminate number of years. If the entity assumes it will defer renovation into the distant future, it would be difficult to reasonably estimate clean-up costs in the future due to factors such as technological innovations.

In summary, we are concerned that the Board seems to be suggesting that financial reporting will be improved by factoring the uncertainty surrounding the timing and method of settlement of an asset retirement obligation into the fair value of the liability. In a number of cases, particularly those involving asbestos abatement, we believe that

entities will rightfully conclude that the obligations are not reasonably estimable and, therefore, not recognize them. It is not clear from the ED that this is the outcome the Board is envisioning.

Issue 2: The Board concluded that all retirement obligations within the scope of Statement 143 that meet the definition of a liability in Concepts Statement 6 should be recognized as liabilities. Concepts Statement 6 states that a liability has three essential characteristics. The second characteristic of a liability is that the duty or responsibility obligates a particular entity, leaving it little or no discretion to avoid the future sacrifice. The Board decided that the ability to indefinitely defer settlement of an asset retirement obligation or the ability to sell the asset does not provide the entity discretion to avoid the future sacrifice, nor does it relieve the entity of the obligation. Are there any instances where a law or regulation obligates an entity to perform retirement activities but allows the entity to permanently avoid settling the obligation? If so, please provide specific examples.

We are not aware of any instances where a law or regulation obligates an entity to perform retirement activities but allow the entity to permanently avoid settling the obligation.

Additional Comment Regarding Initial Implementation

We recommend that the provision related to disclosing the pro forma impact as if the interpretation were adopted in prior periods should be eliminated. Such information is misleading since it is based on a fair value of the liability that is calculated as of the effective date of this proposed Interpretation. Further, it may be confusing since the transition provisions require a cumulative change in accounting to be recognized upon adoption.