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Director, TA&I-FSP
Financial Accounting Standards Board
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Proposed FASB Staff Position—Applicability of FASB Statement No. 143, *Accounting for Asset Retirement Obligations*, to Legislative Requirements on Property Owners to Remove and Dispose of Asbestos-Containing Materials

We appreciate the opportunity to comment on the above-referenced proposed FASB Staff Position (FSP). Overall, we believe that the proposed FSP provides helpful guidance for preparers and auditors in better understanding the scope of Statement 143 and in enhancing consistency in its application. However, we suggest that certain clarifications be made to adequately communicate that guidance. Those suggested clarifications are discussed below.

Basis for Creation of an Asset Retirement Obligation

As noted in the proposed FSP, Statement 143 focuses on the three characteristics of a liability that are discussed in Concepts Statement 6 to determine whether an asset retirement obligation meets the definition of a liability. It provides that a company has incurred a recognizable liability if:

- It has a present duty or responsibility to one or more entities that entails settlement by probable future transfer or use of assets.
- It has little or no discretion to avoid a future transfer or use of assets.
- An obligating event already has occurred.

The proposed FSP indicates that, “[c]ertain legislation creates a legal obligation for the owner of a building to remove and dispose of asbestos.” The National Emissions Standards for Hazardous Air Pollutants (NESHAP)¹ applies “*when a building is either renovated or demolished*” (emphasis added in italics). Based on that language, it would appear that the obligating event occurs when the building is demolished or renovated or when an entity becomes obligated to do so. Since NESHAP does not require that the related asset be demolished or renovated, it is unclear to us as to how an owner has incurred a legal obligation under that legislation to be recognized under Statement 143 until such time as renovation or demolition activities are

¹ We understand, based on discussions with the FASB staff, that the legislation referred to in the previous sentence is NESHAP. However, the FSP, if finalized, should be specific in that regard.

undertaken. We believe that clarification should be provided in that regard because, as discussed further below, this guidance should prove useful in evaluating analogous circumstances.

The proposed FSP also notes that although it is conceivable that the owner of a building may be able to avoid triggering the requirements of NESHAP for a period of time through active maintenance and other currently practiced techniques, such as encapsulation, it may be required at any time to remove asbestos due to events outside its control. The proposed FSP gives examples of certain such events, including fires, boiler explosions, water damage, and natural disaster. While we agree that such an event *could* occur, it is unclear to us how the owners of a building have incurred a legal obligation under NESHAP until such time as those events actually occur. That is, if the described events trigger the obligation, the obligation should be recognized at the time the event occurs.

If the FASB staff concludes in a final FSP that entities have incurred a legal obligation under NESHAP prior to undertaking renovation or demolition activities, we believe that a more valid argument in support of that conclusion is that, practically speaking, no building will last forever. That is, despite an owner's best efforts to maintain the building, the ability to defer settlement of the obligation does not eliminate that obligation (although the probability that settlement will be deferred must be considered in the measurement of the liability).

Impact on Analogous Situations

Although the proposed FSP deals specifically with asbestos material, the issues raised in the proposed FSP are analogous to other situations, including, for example, the planned replacement of utility poles by an electric utility or telephone company. There may be no legal requirement to replace the poles, although the owner of the poles may conclude that, to maintain consistent service, the poles should be replaced periodically. Once the poles are removed from the ground, existing legislation may require special disposal procedures for poles that have been treated with certain chemicals (e.g., creosote). Many companies have interpreted the provisions of Statement 143 to not require recognition of an asset retirement obligation in that situation. That is, those companies believed that no legal obligation to dispose of the poles in a specified manner is "triggered" until the poles are removed. We also understand that one SEC registrant discussed this conclusion with the SEC staff prior to its adoption of Statement 143, and that the SEC staff did not object to its conclusion. The proposed FSP should clarify whether its conclusions relate only to obligations arising under NESHAP, and, if so, why it is not applicable to analogous situations.

Transition

The proposed FSP does not currently provide transition guidance. We believe that the guidance in Statement 143 was not clear on this issue, as illustrated by the initial contrary advice provided by the FASB staff (later retracted), and the SEC staff not objecting to a contrary conclusion by at least one registrant. Similar to the requirements for adopting Statement 143, we believe that the

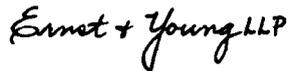
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requirements of the proposed FSP should be adopted as a cumulative effect of a change in accounting principle pursuant to the requirements of APB Opinion No. 20, *Accounting Changes*.

We would be pleased to discuss our comments with the Board members or the FASB staff at your convenience.

Very truly yours,

A handwritten signature in black ink that reads "Ernst & Young LLP". The signature is written in a cursive, flowing style.