

Expanded SEC Requirements for Environmental Disclosures Begins With the Deal

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A. Sarbanes-Oxley Requirements

1. Purpose of Sarbanes-Oxley is to restore investor confidence through closer regulation of auditors, accountants, attorneys and company management
2. Requires management to ensure through internal reporting systems that it receives accurate information regarding company's expenses, future costs and material events or impacts on future business
 - contains criminal provisions for fraudulent certifications
3. Environmental management/legal personnel are significantly impacted by Sarbanes-Oxley because environmental issues are already a target of SEC disclosure rules

B. Environmental Disclosure in SEC Filings

1. Disclosure in Description of Business (Annual Reports)
 - The company must disclose *material* effects of compliance with environmental law, including impact on earnings, competitive position and capital expenditures (S-K 101)
2. Disclosure in Legal Proceedings
 - The company must disclose any *material* pending legal proceedings, other than ordinary routine litigation incidental to its business (S-K 101)
 - Disclosure of any enforcement proceedings where the government is a party that could reasonably be expected to result in sanctions of \$100,000 or more (S-K 103)
3. Disclosure in Management Discussion and Analysis (S-K 103)
 - General requirement to disclose “any known trends, demands, commitments, events or uncertainties” that are reasonable likely to have a material effect on a company’s “financial condition...” (S-K 303)

- The SEC emphasizes that this applies to future or anticipated new regulations and Superfund liabilities
- Companies required to evaluate future consequences of regulations
- Duty to disclose pertains to costs and liabilities that are material
- SEC has said there is no quantitative threshold for materiality
- Test is “would information alter a reasonable investor’s view of the company”

C. Staff Accounting Bulletin ("SAB") 92

1. Estimates for accrual and disclosure of environmental liabilities should be based on:
 - current law and methodology
 - existing technology
 - EPA data and existing industry-wide experience
 - net present value
2. Where there is a range of estimates, and no amount in the range can be determined to be the better estimate, the registrant should recognize the minimum amount in the range
3. FASB-5 governing contingent liabilities requires disclosure of a contingent loss where loss contingency falls within range; minimum amount within range must be accrued

D. Asset Retirement Obligations

1. FAS 143 revises accounting treatment of Asset Retirement Obligations ("ARO")
 - certain types of environmental obligations, such as disposal of hazardous building components, underground tanks and asbestos must be accounted for as ARO rather than contingent liabilities
2. FIN 47 issued in March 2005 to clarify that any current legal obligation to take action upon retirement of asset must be booked as an ARO
 - recognize ARO liability if fair market value is available

- disclose ARO's where no FMV can be estimated
- disclose contamination remediation obligations at property if legally obligated to remediate

E. ASTM Disclosure Standards

1. The Rose Foundation submitted petition requesting two new rules to clarify the material disclosure requirements, based on ASTM standards:
 - ASTM Standard Guide for Estimating Monetary Costs and Liability for Environmental Matters, E 2137-01
 - ASTM Standard Guide for Disclosure of Environmental Liability, E 2173-01
 - 28 charitable organizations, other public interest groups, AFL-CIO and brokerage firms have joined in the request
2. ASTM Standard E 2137-01 lays out four methods to estimate the cost of environmental liabilities
 - (1) Expected Value Approach
 - (2) Most likely value approach
 - (3) Range of values approach
 - (4) Known Minimum Value approach
3. All approaches would require more disclosure than current requirement to disclose only where a liability is estimable and probable
4. ASTM approaches would require companies to *aggregate* all environmental liabilities
5. ASTM Standard E 2173 requires disclosure in specific instances:
 - PRP status
 - RCRA corrective action
 - Assuming environmental risks by contract
 - Party to legal action
 - Others

F. Global Warming Reporting

1. Do companies have to evaluate and disclose the potential impacts of requirements to limit greenhouse gas emissions (GHG)?

2. No federal requirements, but several states have adopted legislation to limit GHG emissions.

- Public interest group pressure to report

G. SEC Enforcement

1. Action against Ashland Inc. for minimizing cleanup reserves first action in over 10 years

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