

*FULL DISCLOSURE: FINANCIAL STATEMENT DISCLOSURES
UNDER CERCLA*

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INTRODUCTION

As environmental issues become increasingly predominant in regulatory and legislative agendas as well as in the minds of consumers and shareholders, corporations wishing to attain or maintain favorable market position must take affirmative steps to recognize and respond to environmental liabilities.¹ However, in practice, there is a great deal of disparity regarding how and when businesses² choose to recognize their liabilities.³ The accounting function plays a central role in how businesses choose to disclose such information.

Environmental issues are no longer the limited province of the oil and gas producer, landfill operator, or "smoke stack" company.⁴ Environmental liability is a growing concern for a substantial number of business managers in this country. The accounting function in particular is affected by an expanding responsibility to disclose environmental liabilities and risks. For example, when companies obtain bank financing, environmental concerns may influence loan negotiations.⁵ Similarly, companies registered under federal securities laws now have extensive environmental reporting requirements.⁶ Given the risks of successor liability, it may prove perilous for corporations to ignore environmental issues in merger and acquisition discussions.⁷

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1. See John P. Surma & Albert A. Vondra, *Accounting for Environmental Costs: A Hazardous Subject*, J. ACCOUNTANCY, Mar. 1992, at 51, 51. A survey by Surma and Vondra showed that companies that chartered board-level committees dealing with environmental responsibilities were viewed more favorably by shareholders. *Id.*

2. The word "business," as used in this article, is intended to cover a broad spectrum of enterprises or activities.

3. Surma & Vondra, *supra* note 1, at 52. According to the survey, individual business accounting practices varied as to when businesses recognized environmental liabilities, including: at the sale, disposal or abandonment of a facility; on completion of a remedial investigation/feasibility study; on initial notification by the Environmental Protection Agency (EPA); or as expenses were incurred during cleanup. *Id.* at 53.

4. See Robert M. Cox, Jr., *Another Victim of Superfund*, WALL ST. J., Feb. 23, 1993, at A20 (describing the demise of a \$5.5 million Pennsylvania paint manufacturing company due to environmental liabilities).

5. See discussion regarding lender liability *infra* note 43 and accompanying text.

6. See discussion *infra* Part II.B.

7. See discussion *infra* Part I.B.3 and note 44.

Because of the substantial costs associated with remediating past environmental degradation⁸ and instituting environmentally sound business practices, the corporate accounting function performs an increasingly important role in the management of a company's environmental affairs. As companies incur significant environmental costs, the financial effect must be properly reflected in financial statements.

This article focuses on a company's duty to disclose, within its financial statements, environmental contingencies that relate to the Comprehensive Environmental Response, Compensation and Liability Act⁹ (CERCLA or Superfund). Part I states general provisions of the Superfund legislation. Part II offers an overview of current authoritative accounting guidance used in accounting for environmental contingencies. Finally, Part III presents and discusses a proposal for more stringent financial statement disclosure guidelines for environmental contingencies.

I. ENVIRONMENTAL LAWS

A. General Overview and Background

Congress and state legislatures have passed strict environmental laws in such wide ranging areas as noise control,¹⁰ toxic substances,¹¹ safe drinking water,¹² and pesticides.¹³ While these statutes focus primarily on the *release* of pollutants, few deal with *remediation* of past environmental degradation. Congress has sought to close this "gap" by enacting remedial statutes designed to clean up past contamination and, at the same time, provide a significant deterrent to future polluters.¹⁴ CERCLA is the most expansive of these remedial statutes.¹⁵

8. *See, e.g.,* Kumar Naj, *Can \$100 Billion Have No Material Effect On Balance Sheets ?*, WALL ST. J., May 11, 1988, at 1; Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) § 106(b), 42 U.S.C. § 9606(b) (1988) (failing to comply with a cleanup order may subject the recipient to fines of up to \$25,000 per day for each day the order is ignored). A Potentially Responsible Party (PRP) may not only be held liable for the actual cleanup costs involved in a Superfund site, but also may be liable for a variety of civil and criminal fines and other penalties.

9. CERCLA §§ 101–175, 42 U.S.C. §§ 9601–9675.

10. Noise Control Act of 1972, 42 U.S.C. §§ 4901–4918 (1988).

11. Toxic Substance Control Act of 1976, 15 U.S.C. §§ 2601–2629 (1988).

12. Safe Drinking Water Act, 42 U.S.C. §§ 300f to 300j–26 (1988).

13. Federal Environmental Pesticide Control Act of 1972, 7 U.S.C. §§ 136–136y (1988).

14. *See, e.g.,* CERCLA § 104, 42 U.S.C. § 9604 (authorizing remedial action by the president consistent with the national contingency plan); Resource Conservation and Recovery Act of 1976 (RCRA) § 3004(u), 42 U.S.C. § 6924(u) (1988) (requiring corrective action for all releases of hazardous waste at treatment, storage or disposal facilities seeking permits). Prior to CERCLA, RCRA was the primary piece of federal legislation regulating the transportation, storage and disposal of hazardous wastes.

15. CERCLA § 104, 42 U.S.C. § 9604. RCRA and Superfund are similar statutes. RCRA regulates active solid and hazardous waste disposal with a focus on promoting new techniques in

Strict compliance with CERCLA requirements is demanded of businesses involved in each stage of the hazardous waste life cycle. Because the costs of compliance under CERCLA can be substantial, it is of primary importance to investors that the business make honest and timely disclosure of these liabilities. In addition, standards of accounting which require disclosure of contingent environmental liabilities dictate that companies conduct their operations in an environmentally responsible manner.

B. CERCLA: The Superfund Statute

1. General Provisions

Superfund was enacted in 1980,¹⁶ partially in response to the Love Canal incident.¹⁷ The legislation is intended to identify hazardous waste sites and to ensure and supervise their cleanup.¹⁸ The law is a maze of legislation that primarily involves the federally monitored cleanup of "inactive" hazardous waste sites,¹⁹ as well as the cleanup of newly released hazardous substances.²⁰ Superfund, as the name suggests, is a "pool" of money reserved by the Environmental Protection Agency (EPA) to fund governmental cleanup of both abandoned and active hazardous waste sites that pose a substantial threat to human health or the environment.²¹ The initial cost of an action is covered by Superfund pending reimbursement from the parties responsible for the transport or disposal of the waste, or operation of the site.²²

waste management, while CERCLA targets the remediation of both active and abandoned hazardous waste sites. *See generally The Comprehensive Environmental Response, Compensation, and Liability Act*, CORPORATE PRACTICE SERIES (BNA) No. 57 at A-27 (1991) [hereinafter C.P.S. No. 57].

16. In 1986 Superfund was amended by the Superfund Amendments and Reauthorization Act (SARA). SARA represents a major expansion of Superfund. Its principal provisions include extending Superfund for five additional years; increasing the initial "pool" of money available to the EPA to clean up abandoned sites; and codifying certain EPA policies regarding storage, disposal and cleanup of hazardous wastes. GENE LUCERO ET AL., *ENSR CORPORATION, SUPERFUND HANDBOOK: A GUIDE TO MANAGING RESPONSES TO TOXIC RELEASES UNDER SUPERFUND 13-14* (3d ed. 1989) [hereinafter *SUPERFUND HANDBOOK*].

17. H.R. REP. NO. 1016, 96th Cong., 2d Sess., pt. 1, at 18-19 (1980), *reprinted in* 1980 U.S.C.C.A.N. 6119, 6120-22. In the late 1970s, over 2500 residents of Love Canal were forced to relocate when it was discovered that a chemical company had released dioxin, PCBs and other hazardous waste into their New York neighborhood. *Id.*

18. H.R. REP. NO. 1016, 96th Cong., 2d Sess., pt. 1, at 17 (1980), *reprinted in* 1980 U.S.C.C.A.N. at 6119.

19. H.R. REP. NO. 1016, 96th Cong., 2d Sess., pt. 1, at 17 (1980), *reprinted in* 1980 U.S.C.C.A.N. at 6119-20.

20. CERCLA § 104(b), 42 U.S.C. § 9604(b). CERCLA authorizes removal or remedial action by the President whenever there is reason to believe a release "has occurred or is about to occur" or if exposure to a hazardous substance poses imminent danger to the public health and welfare.

21. H.R. REP. NO. 1016, 96th Cong., 2d Sess., pt. 1, at 17 (1980), *reprinted in* 1980 U.S.C.C.A.N. at 6119.

22. *Id.*

2. Site Identification

The EPA maintains a computerized database, the Comprehensive Environmental Response, Conservation and Liability Information System, which lists all identified potential Superfund sites.²³ The procedures for cleanup of these sites are set forth in the National Contingency Plan.²⁴ Superfund specifies minimum requirements for the plan and outlines the criteria that are to be used in evaluating a site for potential cleanup.²⁵

Within one year after a site is listed as a Superfund site, the lead agency,²⁶ usually the state environmental protection agency, must perform a preliminary assessment to determine if a release of a hazardous substance has occurred or if a significant threat of a release exists at the site.²⁷ If the preliminary assessment indicates a release has occurred or is likely to occur, a "site investigation" is performed to collect samples, identify the waste handling practices followed at the site, describe the contaminants, and define potential human and environmental targets effected by the contamination.²⁸ A site is proposed for inclusion on the National Priorities List (NPL)²⁹ based on a score received through a mathematical evaluation by the EPA.³⁰ Inclusion on the NPL indicates that the EPA may begin actual site remediation using Superfund monies.³¹

After a site is added to the NPL, either the EPA or the Potentially Responsible Party (PRP)³² performs a Remedial Investigation/Feasibility Study

23. SUPERFUND HANDBOOK, *supra* note 16, at 43. As of 1989, there were over 30,000 sites in the database. *Id.*

24. CERCLA § 105(b), 42 U.S.C. § 9605(b); SUPERFUND HANDBOOK, *supra* note 16, at 43. The National Contingency Plan (NCP) was originally enacted as part of the Water Pollution Control Act Amendments of 1972 § 311, 33 U.S.C. § 1321 (1986), which regulates discharges of oil and hazardous substances into navigable and related waters. The Superfund legislation expanded the NCP under section 105 to include a section called the "National Hazardous Substance Response Plan." This section, as revised by the SARA amendments of 1986, relates to cleanup actions authorized by CERCLA. *Id.*

25. CERCLA § 105(a)-(c), 42 U.S.C. § 9605(a)-(c).

26. The lead agency is either the federal or state agency providing the On-Scene Coordinator or the official in charge of a CERCLA response action. SUPERFUND HANDBOOK, *supra* note 16, at 8. Lead agency responsibility may shift during the Superfund process. *Id.*

27. *Id.* at 45.

28. *Id.* at 46.

29. *Id.* at 43-47.

30. *Id.* at 44. A site is scored under the Hazard Ranking System (HRS) based on information gathered during the preliminary assessment/site investigation phase. The site is placed on the NPL if it scores above the cutoff or if the state has designated the site as its highest priority problem. *Id.* at 43.

31. *Id.* at 44. Following proposed inclusion on the NPL, the EPA allows a comment period to precede final listing on the NPL.

32. *Id.* at 52. This offers the PRP a chance for early involvement by conducting the RI/FS. *Id.* As an incentive, EPA has stated that early PRP participation may be considered when EPA performs allocation of liability among PRPs through a Nonbinding Allocation of Responsibility

that begins the cleanup process.³³ The study usually takes two or more years to complete.³⁴ Once the study is completed, a cleanup plan is selected and the remediation process begins.³⁵

3. Liability Under the Statute

Although interpreting CERCLA's complexities may be burdensome for businesses, one result of the law is unmistakable: the government will find someone to pay for or reimburse the government for cleanup of a Superfund site. Liability is placed on those individuals who have been identified by the EPA as PRPs for Superfund sites.³⁶

PRPs include, but are not limited to:

1. Current owners or operators of a facility from which a release of a hazardous substance occurs;
2. Past owners or operators of a facility at the time of disposal or release of hazardous substances;
3. Those who arranged for treatment or disposal or transport for treatment/disposal of hazardous substances at any facility owned by another party;
4. Those who accepted hazardous substances for transport to a facility they themselves selected.³⁷

In considering who might be liable under these categories, the broad scope of Superfund liability becomes apparent. Current owners of contaminated property are strictly liable under the statute based solely on their ownership interest.³⁸ Persons³⁹ who previously owned property that became contaminat-

(NBAR). *Id.*

33. *Id.* at 49. In some cases, the Remedial Investigation/Feasibility Study is performed prior to the site's inclusion on the NPL. *Id.*

34. *Id.* at 51.

35. *Id.* at 55–63. Remediation strategies typically focus on source control and residual contamination management. *Id.*

36. PRPs are subject to *strict liability* under CERCLA. CERCLA § 107, 42 U.S.C. § 9607 notes 2–2a. *Joint and several liability* may be imposed even though the actor's role in creating the hazardous release was small. See *United States v. Monsanto Co.*, 858 F.2d 160, 167 n.11 (4th Cir. 1988) (holding that CERCLA permits joint and several liability in cases of indivisible harm), *cert. denied* 490 U.S. 1106 (1989). The statute does, however, allow PRPs to pursue a contribution claim against other PRPs. CERCLA § 113(f), 42 U.S.C. § 9613(f).

37. CERCLA § 107(a), 42 U.S.C. § 9607(a).

38. An owner who leases the property is a PRP even if the contamination was caused by a lessee. *United States v. Argent Corp.*, 21 Env't Rep. Cases (BNA) 1353, 1356 (D.N.M. 1983); C.P.S., No. 57, *supra* note 15, at A–33 n. 78. See discussion regarding the “innocent landowner defense” *infra* notes 55–58 and accompanying text.

39. The statute defines “person” as “an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality,

ed while they owned it are liable even if the contamination occurred prior to the enactment of CERCLA.⁴⁰ Corporate shareholders/officers⁴¹ and related corporate entities may also be held liable as responsible parties.⁴² Furthermore, financial institutions and secured creditors are candidates for Superfund liability.⁴³ Even successor corporations to a merger have incurred liability for cleanup costs in certain situations.⁴⁴

commission, political subdivision of a State, or any interstate body." CERCLA § 101(21), 42 U.S.C. § 9601(21).

40. *United States v. Northwestern Pharmaceutical & Chem. Co.*, 810 F.2d 726, 732-34 (8th Cir. 1986), *cert. denied*, 484 U.S. 848 (1987).

41. *See New York v. Shore Realty Corp.*, 759 F.2d 1032, 1052 (2nd Cir. 1985) (holding the principal officer and shareholder liable for cleanup costs under CERCLA).

42. *See United States v. Kayser-Roth Corp.*, 910 F.2d 24 (1st Cir. 1990) (holding a parent corporation directly liable for CERCLA violations committed by a wholly owned subsidiary), *cert. denied*, 111 S. Ct. 957 (1991).

43. CERCLA contains an exemption for secured creditors. CERCLA § 101(20)(A), 42 U.S.C. § 9601(20)(A). The exemption absolves from liability any "person, who, without participating in the management of a . . . facility, holds indicia of ownership primarily to protect his security interest in the . . . facility." *Id.* The banking industry was dealt a severe blow by the Eleventh Circuit in *United States v. Fleet Factors Corp.*, 901 F.2d 1550 (11th Cir. 1990), *cert. denied*, 111 S. Ct. 752 (1991). The court held that a secured creditor could be liable under Superfund, if it participates "in the financial management of a facility to a degree indicating a capacity to influence the corporation's [debtor's] treatment of hazardous wastes." *Id.* at 1557. The court, in *Fleet Factors*, stated that its decision "should encourage potential creditors to investigate thoroughly the waste treatment systems and policies of potential debtors . . . [and] to monitor the hazardous waste treatment systems and policies of their debtors and insist upon compliance with acceptable treatment standards as a prerequisite to continued and future financial support." *Id.* at 1558. For review of the issue after *Fleet Factors*, see Randall J. Burke, *Much Ado About Lending: Continuing Vitality of the Fleet Factors Decision*, 80 GEO. L.J. 809 (1992). *See also* National Oil and Hazardous Substance Pollution Contingency Plan; Lender Liability Under CERCLA, 57 Fed. Reg. 18,344 (1992) (to be codified at 40 C.F.R. § 300) (defining "the range of activities that may be undertaken by a person who maintains indicia of ownership in a facility primarily to protect a security interest without such activities being considered to be participation in the facility's management").

44. Because of the strict liability aspects of Superfund, courts have shown little sympathy for the corporate successor in a merger:

Congressional intent supports the conclusion that, when choosing between the taxpayers or a successor corporation, the successor should bear the cost. Benefits from use of the pollutant as well as savings resulting from the failure to use non-hazardous disposal methods inured to the original corporation, its successors, and their respective stockholders and accrued only indirectly, if at all to the general public. We believe it in line with the thrust of the legislation to permit—if not require—successor liability under traditional concepts.

Lewis M. Barr, *CERCLA Made Simple: An Analysis of the Cases Under the Comprehensive Environmental Response, Compensation and Liability Act of 1980*, 45 BUS. LAW. 923, 980 (1990) [hereinafter *CERCLA Made Simple*] (quoting *Smith Land & Improvement Corp. v. Celotex Corp.*, 851 F.2d 86, 92 (3d Cir. 1988), *cert. denied*, 488 U.S. 1029 (1989)).

Costs associated with cleanup of a site can run into the millions of dollars.⁴⁵ The EPA estimates the cost of an average Superfund cleanup to be around \$25 million.⁴⁶ The following example illustrates a typical liability situation under Superfund: a company manufacturing oil containing dioxin can be held jointly and severally liable for cleanup costs (as a generator of hazardous waste) with the company arranging for transport, as well as the company responsible for actually spraying the oil.⁴⁷

4. Defenses to Liability

Defenses to Superfund liability are limited. An individual or entity initially identified as a PRP will not be held liable if a release of hazardous wastes was due *solely* to an act of God,⁴⁸ an act of war,⁴⁹ the actions of a third party,⁵⁰ or if the owner is an innocent purchaser of contaminated property.⁵¹ As may be imagined, the act of God⁵² and act of war defenses are rarely applicable or successful.

The third party defense is raised most frequently, although with little success.⁵³ In order to succeed with a third party defense, an otherwise responsible party must show that:

1. No direct or indirect relationship, *contractual or otherwise*, existed between the landowner/defendant and the third party;
2. Due care was exercised regarding the hazardous substances upon their discovery; and
3. Precautions were taken against any foreseeable acts or omissions of the third party and any foreseeable results of those actions.⁵⁴

An additional defense, the "innocent landowner," was added in 1986 by the Superfund Amendments and Reauthorization Act (SARA).⁵⁵ SARA provides

45. Besides the actual cleanup costs, PRPs also may be liable for government administrative costs, attorney's fees and damages to natural resources. See C.P.S. No. 57, *supra* note 15, at A-27.

46. See Naj, *supra* note 8, at 1. See, e.g., CERCLA § 106(b), 42 U.S.C. § 9606(b).

47. See generally *United States v. Bliss*, 667 F. Supp. 1298 (E.D. Mo. 1987).

48. CERCLA § 107(b), 42 U.S.C. § 9607(b). See generally *CERCLA Made Simple*, *supra* note 44, at 983-988.

49. CERCLA § 107(b), 42 U.S.C. § 9607(b).

50. *Id.*

51. CERCLA §§ 101(35)(A), 107(b)(3), 42 U.S.C. §§ 9601(35)(A), 9607(b)(3). For a discussion of the "innocent landowner" defense, see Richard H. Mays, *The Blessed State of Innocence: The Innocent Landowner Defense Under Superfund*, 18 CHEM. WASTE LITIG. REP. 864 (1989).

52. *CERCLA Made Simple*, *supra* note 44, at 985 (1990).

53. *Id.*

54. See Mays, *supra* note 51, at 865 (emphasis added); CERCLA § 107(b)(3), 42 U.S.C. § 9607(b)(3).

55. CERCLA § 101(35), 42 U.S.C. § 9601(35). SARA added § 9601(35) as a clarification of

that owners who purchased contaminated property and thus would be liable for its cleanup can avoid liability if they can prove that the disposal or placement of a hazardous substance took place prior to their purchase of the property.⁵⁶ Additionally, the landowner must show a lack of knowledge regarding the previous disposal of the hazardous substance,⁵⁷ and that the landowner conducted an appropriate inquiry regarding the use of the property prior to purchase, or that the landowner “acquired the facility by inheritance or bequest.”⁵⁸

While CERCLA and current case law adequately define Superfund liability and defenses, neither of these frameworks answer the fundamental question of how company financial statements should account for costs associated with the remediation of a hazardous waste site. Furthermore, the accounting profession, in the absence of any statutory or case law guidance, has not addressed these questions. The accounting profession contemplated accrual and disclosure of contingent liabilities in the 1975 Statement of Financial Accounting Standard No. 5 (SFAS 5), entitled “Accounting For Contingencies.”⁵⁹ The 1975 statement, however, does not adequately respond to the difficulties encountered in disclosure of *environmental* contingent liabilities. Balance sheet and income statement treatment of environmental cleanup costs was addressed in the Financial Accounting Standards Board’s Emerging Issues Task Force Consensus No. 90–8.⁶⁰ However, there is still a need for more stringent disclosure guidelines for contingent environmental liabilities within financial statements.

the term “contractual relationship” used in § 9607(b)(3). Landowners exempted from liability by § 9601(35) are still subject to the requirements of due care and of taking precautions against the foreseeable acts or omissions of third parties under § 9607(b)(3). *See also CERCLA Made Simple, supra* note 44, at 986.

56. CERCLA § 101(35), 42 U.S.C. § 9601(35).

57. *Id.* § 101(35)(A)(i), 42 U.S.C. § 9601(35)(A)(i). The extent of due diligence required to be undertaken by the purchaser is statutorily determined at § 101(35)(B). *Id.* § 9601(35)(B). A purchaser who makes “all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability” will satisfy the statutory requirement. *Id.* Any specialized knowledge or experience of the defendant shall be considered in the court’s determination of the appropriate level of inquiry. *Id.*

58. *Id.* § 101(35)(A)(iii), 42 U.S.C. § 9601(35)(A)(iii).

59. ACCOUNTING FOR CONTINGENCIES, Statement of Financial Accounting Standard No. 5 (Fin. Accounting Standards Bd. 1975) [hereinafter SFAS 5]. *See* discussion *infra* Part II.A.

60. FINANCIAL ACCOUNTING STANDARDS BOARD, EMERGING ISSUES TASK FORCE CONSENSUS NO. 90–8 (Fin. Accounting Standards Bd. 1990) [hereinafter EITF 90–8]. Both SFAS 5 and EITF 90–8 are guidance to accounting professions issued by the Financial Accounting Standards Board.

II. AUTHORITATIVE GUIDANCE FOR DISCLOSING ENVIRONMENTAL CONTINGENCIES

A. Statement of Financial Accounting Standard No. 5

Companies typically prepare their financial statements in accordance with Generally Accepted Accounting Principles (GAAP). GAAP is a hierarchy of accounting standards promulgated by various professional accounting bodies, most notably the Financial Accounting Standards Board (FASB) and the American Institute of Certified Public Accountants (AICPA).⁶¹ SFAS 5 is the primary source of guidance available to companies for estimating and disclosing environmental liabilities in their financial statements.⁶²

SFAS 5 uses probabilities to determine the likelihood that a loss contingency⁶³ will eventually be realized.⁶⁴ There are three levels of probability at which a contingency may be classified by a business entity:

1. *Probable*. The future event or events are likely to occur.
2. *Reasonably possible*. The chance of the future event or events occurring is more than remote but less than likely.
3. *Remote*. The chance of the future event or events occurring is slight.⁶⁵

SFAS 5 delineates appropriate treatment of financial statements based upon each contingency classification. If a loss contingency appears probable *and* the amount of the loss can be reasonably estimated, the contingency "shall be accrued by a charge to income."⁶⁶ This means the estimated amount will

61. See generally CODIFICATION OF ACCOUNTING STANDARDS AND PROCEDURES, Statement on Auditing Standards No. 69, The Meaning of 'Present Fairly in Conformity With Generally Accepted Accounting Principles' in the Independent Auditor's Report, (Am. Inst. of Certified Pub. Accountants 1992). Statements of Financial Accounting Standards (SFAS) issued by FASB are at the top of the GAAP hierarchy. *Id.*

62. See generally SFAS 5, *supra* note 59.

63. SFAS 5 defines contingency as "an existing condition, situation, or set of circumstances involving uncertainty as to possible gain . . . or loss . . . to an enterprise that will ultimately be resolved when one or more future events occur or fails to occur." Loss is further defined to include charges referred to as both *expenses* and *losses*. *Id.* § 1 & n.1.

64. *Id.* § 3.

65. *Id.*

66. *Id.* § 8. Emerging Issues Task Force 90-8 assesses whether environmental cleanup costs should be capitalized or expensed. The conclusion reached is that the costs should generally be charged to expense. EITF 90-8, *supra* note 60. EITF 90-8 specifically "does not address (1) when to recognize liabilities related to environmental contamination treatment costs, [or] (2) the measurement of those liabilities . . ." *Id.*

FASB Interpretation No. 14, "Reasonable Estimation of the Amount of a Loss," (interpreting FASB Statement No. 5, § 8(b)), indicates that if the loss estimate is within a range of amounts, and no amount within the range is better estimate than any other amount within the range, then the *minimum* amount in the range should be accrued (if probable). REASONABLE ESTIMATION OF THE AMOUNT OF A LOSS, Interpretation No. 14, § 3 (Fin. Accounting Standards

be recognized as a loss as well as disclosed in the financial statements.⁶⁷ If the loss cannot be estimated but the likelihood of it occurring is probable, the contingency should be disclosed with an explanation of why no estimate can be made.⁶⁸ If the loss is reasonably possible, accrual of the expense is not required, but disclosure of the nature of the contingency and an estimate of the potential loss is necessary.⁶⁹ Finally, if the contingency is classified as remote, there is generally no impact reflected in financial statements.

In Appendix A to SFAS 5, FASB gives several examples of the application of SFAS 5 to specific situations. With respect to Superfund disclosures, the most appropriate example is set out under the heading "Litigation, Claims, and Assessments."⁷⁰ In the discussion, SFAS 5 indicates that the decision to accrue and/or disclose a loss that may result from pending and potential litigation should be based in large part on the "degree of probability of an unfavorable outcome."⁷¹ Several factors are listed that should be considered in assessing the probability of litigation outcome:

[T]he nature of the litigation, claim, or assessment, the progress of the case . . . , the opinions or views of legal counsel and other advisers, the experience of the enterprise in similar cases, the experience of other enterprises, and any decision of the enterprise's management as to how the enterprise intends to respond to the lawsuit, claim or assessment⁷²

Once it is determined that an unfavorable litigation outcome is either probable or reasonably possible, the company must derive an estimate for disclosure. In the context of Superfund, that task is even more challenging. Factors such as the number of PRPs, their respective financial resources, joint and several liability, allocation of liability to each PRP, existence of insurance coverage, time frame of the investigation, and related litigation all make the estimation process very difficult and imprecise. Added to the obstacles posed by the estimation process is the fact that companies are generally loath to report information that may attract negative publicity, especially if it is not clear

Bd. 1976).

67. SFAS 5, *supra* note 59, § 9. Disclosure of the nature and amount of accrual pursuant to § 8 may be necessary for financial statements not to be misleading. *Id.* § 8.

68. *Id.* § 10. If no accrual of a loss contingency is made because it is either not "probable," or cannot be estimated, or if there is exposure to loss greater than amount accrued, you must still disclose the contingency if it is "reasonably possible" it will occur, giving either an estimated range of possible loss or an explanation why no estimate can be made. *Id.* §§ 8(a)-(b), 10.

69. *Id.* § 10. If the loss estimate is within a range, the *minimum* amount should be accrued while the *maximum* amount should be disclosed.

70. *Id.* §§ 33-39. Disclosure is not required for contingencies involving a potential but unasserted claim when the potential claimant remains unaware of the claim, unless it is probable that the claim will be asserted and a reasonable possibility exists of an unfavorable outcome. *Id.* § 10.

71. *Id.* § 33.

72. *Id.* § 36.

that the loss or other liability will materialize. Consequently, disclosure policies among companies regarding environmental contingencies vary greatly.⁷³

B. Reporting Required by the Securities and Exchange Commission

The Securities and Exchange Commission (SEC)⁷⁴ is well ahead of FASB in issuing guidance on disclosing environmental contingencies. As a result of the National Environmental Policy Act of 1969,⁷⁵ the SEC has affirmatively required disclosure of environmental contingencies since 1971.⁷⁶ Companies whose securities are registered under the federal securities laws⁷⁷ are required to periodically report and disclose certain information to the SEC.⁷⁸

The current SEC reporting requirements are extensive. Under the Exchange Act of 1934, a company may need to report environmental issues under three different SEC regulations.⁷⁹ Each requirement is exclusive and it is common for a company to be required to report information under all three regulations. Regulation S-K, Item 101 (Description of Business) of a company's annual SEC 10-K filing requires detailed disclosure regarding the material effects that compliance with applicable environmental laws may have

73. In a recent Price Waterhouse Survey regarding the environmental accounting practices of 125 major U.S. corporations, 38% of those responding disclosed environmental matters upon initial notification from the EPA. Interestingly, sixteen percent of the respondents did not disclose until after SFAS 5 liability became *probable*. The remaining 46% disclosed at various other times along the SFAS 5 spectrum. PRICE WATERHOUSE, ENVIRONMENTAL ACCOUNTING: THE ISSUES, THE DEVELOPING SOLUTIONS, A SURVEY OF CORPORATE AMERICA'S ACCOUNTING FOR ENVIRONMENTAL COSTS 17 (1991) [hereinafter PRICE WATERHOUSE SURVEY].

74. For an extensive discussion of the SEC environmental reporting requirements, see OWEN T. SMITH, ENVIRONMENTAL LENDER LIABILITY 167-82 (1991).

75. National Environment Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321-4370a (1988); SMITH, *supra* note 74, at 169 (noting that NEPA requires agencies to interpret and administer the laws of the United States to the fullest extent possible).

76. Disclosures Pertaining to Matters Involving the Environment and Civil Rights, 36 Fed. Reg. 13,989 (1971); SMITH, *supra* note 74, at 169.

77. *See, e.g.*, The Securities Act of 1933, 15 U.S.C. §§ 77(a)-77bb (1988); Securities Exchange Act of 1934, 15 U.S.C. §§ 78a-78ll (1988).

78. There are several reporting vehicles that a company uses to provide accounting and financial information to the SEC. The most comprehensive disclosures are typically contained in a company's 10-K report. The 10-K is submitted once annually and includes analytical and narrative accounting, financial and general business information about the company. Specific information that must be included in the 10-K is detailed at Standard Instructions for Filing Forms Under Securities Act of 1933, Securities Exchange Act of 1934, and Energy Policy and Conservation Act of 1975—Regulation S-K, 17 C.F.R. § 229 (1992).

79. A majority of companies choose to disclose environmental contingencies in their annual 10-K report. In the Price Waterhouse Survey, 63% indicated that they used their 10-K to disclose actual or potential environmental liability. Seventeen percent said they used a 10-Q (quarterly report). Seven percent used an 8-K (press release), while the remaining 13% used another reporting means or had no material items to disclose. PRICE WATERHOUSE SURVEY, *supra* note 73, at 18.

upon the capital expenditures, earnings, and competitive position of the registrant and its subsidiaries.⁸⁰ Item 101 also requires disclosure of any material environmental expenditures expected to be incurred in the current fiscal year and for such future periods the registrant may consider material.⁸¹

Regulation S-K, Item 103 (Legal Proceedings) requires disclosure of any pending or expected legal proceeding (administrative or judicial) to which the company is, or is expected to be, a party, if:

1. The proceeding is material⁸² to the business or financial condition of the registrant; or
2. The proceeding is primarily a claim or potential claim for damages or other monetary sanctions, capital expenditures, deferred charges, or charges to income involving an amount in excess of ten percent of the current assets of the company; or
3. A governmental authority is a party and the proceeding "involves potential monetary sanctions," unless the company reasonably believes the liability exposure is less than \$100,000.⁸³

The final regulation regarding disclosure requirements is Regulation S-K, Item 303 (Management's Discussion and Analysis of Financial Conditions and Results of Operations) (MD&A).⁸⁴ In the MD&A, management is generally required to discuss known material trends, events or uncertainties that are reasonably likely to have a material impact on liquidity, capital resources, or operating results.⁸⁵ Required environmental disclosures under Item 303 are discussed in SEC Financial Reporting Release No. 36 (FRR 36).⁸⁶ FRR 36 requires the company to disclose any uncertainties *unless* management can determine that a material effect "is not reasonably likely to occur."⁸⁷

80. 17 C.F.R. § 229.101(c)(xii). See generally Robert F. Wall & Joseph G. Homsy, *Environmental Reporting Required by the Securities and Exchange Commission*, 6 Toxic L. Rep. (BNA) at 850 (1991).

81. 17 C.F.R. § 229.101(c)(xii).

82. The SEC has provided limited guidance for deciding what environmental matters are material. Companies should consider the seriousness of the matter, the persuasiveness of the matter to the overall business, and the impact of the matter on the trends of its business. 17 C.F.R. § 229.101 (Instructions to Item 101 No. 1)(1991); SMITH, *supra* note 74, at 174 (1991).

83. 17 C.F.R. § 229.103; SMITH, *supra* note 74, at 172-173. Typically companies need not disclose pending or anticipated litigation unless outside of the ordinary course of business. *Id.* However, with regards to environmental litigation, the ordinary course of business exception does not apply if the proceeding falls within the exceptions outlined in Item 103. *Id.*

84. 17 C.F.R. § 229.303.

85. *Id.*; SMITH, *supra* note 74, at 177. The MD&A should focus on material future events and contingencies known to management that are not necessarily reflected in currently reported financial information, but that may impact future operations.

86. Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures, 54 Fed. Reg. 22,427 (1989).

87. 54 Fed. Reg. 22,427, 22,430; SMITH, *supra* note 74, at 177. This disclosure standard differs

Financial Reporting Release 36 outlines a two-step test for determining whether an environmental contingency must be disclosed:

1. Is the . . . event or uncertainty likely to come to fruition? If management determines that it is not reasonably likely to occur, no disclosure is required.
2. If management cannot make that determination, it must evaluate objectively the consequences of the known . . . event or uncertainty on the assumption that it will come to fruition. Disclosure is then required unless management determines that a material effect on the [company's] financial condition or results of operations is not reasonably likely to occur⁸⁸

Financial Reporting Release 36 offers several scenarios in which contingencies must be disclosed. The following hypothetical in FRR 36 describes when a company, identified as a PRP under Superfund, must disclose this information:

The [company] has been correctly designated as a PRP by the Environmental Protection Agency with respect to the cleanup of hazardous waste at three sites. No statutory defenses are available. The [company] is in the process of preliminary investigations of the sites to determine the nature of its potential liability and the amount of remedial costs necessary to clean up the sites. Other PRPs also have been designated, but the ability to obtain contribution is unclear, as is the extent of insurance coverage, if any. Management is unable to determine that a material effect on future financial condition or results of operation is not reasonably likely to occur . . . MD&A disclosure of the effects of PRP status, quantified to the extent reasonably practicable, would be required.⁸⁹

In general, when disclosure is indicated under FRR 36 the SEC requires disclosure of the gross amounts of both potential liability and estimated insurance recovery for the PRP.⁹⁰ SEC registrants are well advised to follow the examples set forth in FRR 36, as the SEC has seriously begun to focus on the adequacy of MD&A disclosures in general⁹¹ and the adequacy of environmental disclosures in particular.⁹²

significantly from the disclosure standard used in determining liability under the anti-fraud provisions of the securities laws. Unlike FRR 36's "presumption" of materiality, the anti-fraud disclosure standard only requires disclosure if the information is material, i.e., "[i]t is not enough that a statement is false or incomplete," the misrepresentation must also be *significant*. *Basic, Inc. v. Levinson*, 485 U.S. 224, 238 (1988).

88. 54 Fed. Reg. 22,427, 22,430.

89. *Id.*

90. Cathy Cole, *Environmental Costs: SEC Expectations Versus Typical Disclosures*, ENVTL. FIN. 485, 487 (Winter 1991/1992). Factors such as insurance coverage, indemnification, etc., may be considered in determining whether a material future effect is "not reasonably likely to occur." 54 Fed. Reg. 22,427, 22,430.

91. See *In re Caterpillar, Inc.*, Exchange Act Release No. 30532, 6 Fed. Sec. L. Rep. (CCH) 73,830 (Mar. 31, 1992) (issuing a consent cease and desist order against Caterpillar for deficiencies noted in the company's MD&A disclosures); Dennis J. Block & Jonathan M. Hoff, *The SEC's "Caterpillar" Order: Trends in MD&A Disclosure*, 208 N.Y. L.J. 5 (1992).

92. "SEC Commissioner Roberts has stated that the 'potential for large losses attributable to

C. Disparity Between SEC Reporting and SFAS 5 Disclosures

The SEC's reporting requirements are much more stringent than current Generally Accepted Accounting Principles. For an SEC registered company this can often result in a tremendous disparity between information disclosed in their SEC 10-K filing⁹³ and information disclosed under GAAP in the Notes to the Consolidated Financial Statements. For a company not subject to the SEC reporting requirements, this often means environmental contingencies are either not disclosed or are underdisclosed in the financial statements.

A review of recent SEC 10-K filings demonstrates this disparity.⁹⁴ In Houston Industries, Inc.'s 1991 10-K filing, management discussed the fact that the company is a PRP at a Superfund site where the total estimated cleanup costs exceed \$80 million.⁹⁵ The company indicated that they could not predict the ultimate outcome.⁹⁶ Remarkably, the Notes to the Consolidated Financial Statements do not mention the site or the fact that the company is involved in a Superfund cleanup action.⁹⁷

In both the Legal Proceedings and the Description of Business section of Newmont Mining Corporation's 1991 10-K, the company reveals that it is a PRP at several Superfund sites and has made various accruals in the current financial statements to reflect this liability.⁹⁸ The accruals were also mentioned under Note 14: "Commitments and Contingencies" found in the Notes to the Consolidated Financial Statements.⁹⁹ Even though details of the pending EPA actions were given in Note 14, most of the information disclosed in the financial statements dealt with the status of the litigation from a procedural standpoint.¹⁰⁰ Unlike the information contained in the Description of Business section of the 10-K, there was little description or explanation of

environmental problems is an important concern that many investors will factor into their investment decision.' Commissioner Roberts has advised attorneys to 'focus seriously on whether your clients have adequately disclosed the short term and long term effects of environmental laws on their operations.'" *Id.*

93. This refers to disclosure under Regulation S-K, Item 101, Item 103, and in the MD&A.

94. This information was obtained by conducting a LEXIS search of 1991 10-K filings. The companies included here are some of the ones who have had a disparity between information contained in the 10-K and information contained in their Notes to the Consolidated Financial Statements included in the annual reports to stockholders. Nothing found would lead the author to conclude that the information disclosed in these 10-Ks is not in compliance with SEC regulations or current GAAP.

95. HOUSTON INDUSTRIES, INC., 1991 SEC 10-K FILING 34, 46-47 (1992), available in LEXIS, COMPANY Library, 10-K File.

96. *Id.* at 47.

97. See generally HOUSTON INDUSTRIES, INC., 1991 ANNUAL REPORT (1992), available in LEXIS, NAARS Library, 91 File.

98. NEWMONT MINING CORP., 1991 SEC 10-K FILING 17, 19 (1992), available in LEXIS, COMPANY Library, 10-K File.

99. See generally NEWMONT MINING CORP., 1991 ANNUAL REPORT (1992), available in LEXIS, NAARS Library, 91 File.

100. *Id.*

their Superfund action, the impact on the company of potential outcomes of the litigation, or the remedial action ordered by the EPA. By not including a discussion similar to the one found in the 10-K, the financial statements do not provide full disclosure as to the importance and magnitude of the Superfund litigation.

According to the Description of Business and Legal Proceedings sections of Pennsylvania Power and Light's 1991 10-K, the company is a PRP at several Superfund sites.¹⁰¹ In the 10-K, the company denied liability for a recovery site in Berks County, Pennsylvania, where the EPA estimated total cleanup cost at \$68 million, while stating that their cost for addressing this matter is not "now determinable but could be substantial."¹⁰² There is no specific mention of the Berks County site or the estimated total cleanup cost in the Notes to the Consolidated Financial Statements. Note 18 of the Consolidated Financial Statements makes only the general comment that "future clean-up or remediation work may result in substantial operating costs which the Company cannot reasonably estimate at this time."¹⁰³

These are just a few examples of the inconsistent and misleading information that is often presented to users of financial statements. Most of the companies examined include substantial disclosure in the Description of Business, Legal Proceedings, and MD&A sections of their 10-K filings, however, they make either minimal or no disclosure of their Superfund actions in their financial statements.¹⁰⁴

III. PROPOSED GUIDANCE FOR REPORTING SUPERFUND CONTINGENCIES

A. *Guidance Proposal*

1. *Introduction*

The following discussion outlines proposed disclosure requirements for entities subject to potential liability under Superfund. These stringent requirements are intended to be used in conjunction with the general disclosure requirements of SFAS 5.¹⁰⁵ SFAS 5 should still govern accrual of these

101. PENNSYLVANIA POWER AND LIGHT, 1991 10-K FILING 8-16 (1992), available in LEXIS, COMPNY Library, 10-K File.

102. *Id.* at 16.

103. PENNSYLVANIA POWER AND LIGHT, 1991 ANNUAL REPORT (1992), available in LEXIS, NAARS Library, 91 File.

104. There is at least one exception worth noting. Public Service Company of Colorado, included in their Notes to the Consolidated Financial Statements extensive information regarding the company's Superfund liability. PUBLIC SERVICE COMPANY OF COLORADO, 1991 ANNUAL REPORT (1992), available in LEXIS, NAARS Library, 91 File. The amount of liability was relatively small and was believed to be recoverable through insurance. The footnote talked about Superfund, its impact, and the uncertainties that surround involvement in a Superfund site. Parts of the discussion were taken verbatim from the MD&A section. *Id.*

105. As is the case with SFAS 5, this proposal is intended to be authoritative GAAP. See Volkert *infra* note 115 and accompanying text.

liabilities. The information disclosed as a result of the proposed requirements should serve to enhance the accuracy and consistency of financial statement disclosures.

2. *General Requirements*

The disclosure of Superfund contingencies is recommended at the investigatory stage, the advanced investigatory stage, and the remediation stage of the Superfund process. Need for disclosure should be assessed at both the date of the financial statements and again prior to the date of issuance of the statements.¹⁰⁶ If a new stage of the Superfund process is entered after the date of the financial statements but prior to the date of issuance, disclosure should be made according to SFAS 5.¹⁰⁷

The proposed disclosure requirements are based on the fundamental accounting principle of conservatism, which advocates early disclosure of “unfavorable events” and suggests “minimization of the amount of net assets and net income.”¹⁰⁸ Where a situation has not been specifically addressed in this proposal, an entity should rely on SFAS 5 for the appropriate authority regarding disclosure and accrual of a contingency. The following “specific requirements” should be followed by an entity unless management can determine that a material effect is *not reasonably likely to occur*.¹⁰⁹

3. *Specific Requirements*

a. *Preliminary Investigatory Stage. Upon receipt of information by the entity that it is the subject of an EPA Superfund investigation and prior to receiving a notice letter of PRP status, preliminary disclosure of the investigation is warranted. Disclosure should include, but is not limited to: (1) a brief description of the Superfund process; (2) a description, time frame, and status of the EPA investigation; and (3) management’s preliminary opinion as to the merits of the investigation.*¹¹⁰

The preliminary investigatory stage is the first step in the Superfund cleanup process.¹¹¹ Although it is not expected at this stage that management

106. If the Superfund contingency arises after the date of issuance, no further publication is necessary until the next financial statement date. See SFAS 5, *supra* note 59, § 11.

107. See *id.*

108. “Conservatism is indicated as one of the ‘characteristics and limitations’ of financial accounting in paragraph 35 of APB Statement No. 4 as follows: ‘*Conservatism*. The uncertainties that surround the preparation of financial statements are reflected in a general tendency toward early recognition of unfavorable events and minimization of the amount of net assets and net income.’” SFAS 5, *supra* note 59, § 82.

109. This is borrowed from the SEC’s presumption of materiality discussed *supra* notes 87, 88 and accompanying text.

110. In practice, it is assumed at this stage management would not have enough information to conclusively assess whether a material effect is likely to occur, and would therefore disclose the information.

111. See discussion of “site identification” *supra* Part I.B.2.

would be able, or could even attempt, to estimate any potential liability that may eventually result from the EPA investigation, disclosure of Superfund involvement is necessary to alert the user of the financial statements that the company is a target of an EPA investigation. With the substantial liability that cleanup costs can impose on a company, early disclosure is critical.

A description of the Superfund process is necessary to avoid misleading the user of the financial statements as to the potential liability of the business entity.¹¹² The description should explain how liability for PRPs is determined under the statute; what the impact of being found liable may be; and how a PRP may recapture funds already paid for cleanup by suing parties not named as PRPs by the EPA.

Management should also include an advisory statement of the likelihood that the company will be held responsible for any of the costs associated with the site under investigation and an estimate or range of possible losses. If such an opinion cannot reasonably be given, an explanation for management's inability to form an opinion should be disclosed.

b. Advanced Investigatory Stage. *Upon notification of PRP status, the entity should disclose that they have been identified as a PRP. Disclosure should include, but is not limited to: (1) the items contained in sections a(1) and a(2) of the Preliminary Investigatory Stage; (2) the potential consequences of PRP status; (3) the total EPA dollar and time estimate for cleanup of the site; (4) the estimated percentage of responsibility the company may have for cleanup of the site; (5) the number of other PRPs associated with the site and their estimated liability; and (6) the existence of any insurance or other indemnification agreements that may be used to offset potential losses.*

To prevent confusion resulting from disclosure, a brief explanation of the possible consequences of PRP status should be presented. Information regarding the number of other PRPs and management's estimate of the company's share for cleanup costs will serve to notify the reader of the effects of Superfund liability. Since PRPs may be subject to joint and several liability, a reasonable estimate of the total potential liability should be included. If the estimate falls within a range, the range should be disclosed. If an estimate cannot reasonably be given, the contingency should be disclosed with an explanation as to why an estimate was not ascertainable.¹¹³ Any estimated reimbursements from insurance coverage or other indemnification agreements should also be disclosed.

112. When reviewing 10-K disclosures, it was noted that those companies involved in a Superfund site included in their disclosures substantial information regarding the Superfund Statute and its operative characteristics. See discussion of 10-Ks that were examined *supra* notes 94-104 and accompanying text.

113. It is likely that individual liability and the number of parties ultimately responsible for sharing in the cleanup costs will be highly uncertain prior to undertaking actual cleanup.

c. Remediation stage. *If an entity has assumed total or partial responsibility for the cleanup of a Superfund site, the guidance under section (b) should be followed where applicable.*

It is presumed that upon a finding of, or a consent to, liability for the cleanup of a Superfund site, the responsible entity will have substantial information regarding the estimated costs of the cleanup and the extent to which the entity will be held liable. Because there is more certainty regarding liability in the remediation stage than in the advanced investigatory stage, SFAS 5 should be of assistance in making disclosure determinations.

B. Appropriate Level of Authority

A new Statement of Financial Accounting Standards on the disclosure of Superfund or other environmental contingencies is not warranted at this time. The process by which FASB issues an accounting standard sometimes takes years, involves multiple drafts, incorporation of comments from members of the accounting community, and hearings where appropriate.

An EITF consensus¹¹⁴ is an appropriate medium through which to present guidance on proper disclosure of potential CERCLA liability. Compared with the extended process required before a SFAS is issued, EITF consensuses are often issued in a matter of months. While originally considered "other literature", the lowest level of authoritative GAAP, EITF consensus positions were recently upgraded in the GAAP hierarchy by the American Institute of Certified Public Accountants.¹¹⁵ In Statement on Auditing Standards No. 69, AICPA noted that EITFs merit greater authoritative treatment, in part, because the SEC announced that it would challenge any accounting that differs from a FASB EITF consensus.¹¹⁶ By expounding on issues covered only generally by an accounting standard, EITFs have found a niche in the GAAP hierarchy. Disclosure of environmental contingencies is an area that needs this expanded coverage and is appropriately addressed in an EITF.

CONCLUSION

Although surrounded by uncertainties, reporting of environmental contingencies is now a permanent part of the legal and financial landscape

114. See EITF 90-8, *supra* note 60 (discussing the issue of capitalizing or expensing environmental cleanup costs). The proposed consensus would address the issues of when to recognize and disclose these costs.

115. CODIFICATION OF ACCOUNTING STANDARDS AND PROCEDURES, *supra* note 61. See generally Linda A. Volkert, EITF Consensuses and the GAAP Hierarchy, J. ACCOUNTANCY, May 1992, at 103, 103-04.

116. CODIFICATION OF ACCOUNTING STANDARDS AND PROCEDURES, *supra* note 61. See also Official Releases: Statement on Auditing Standards No. 69, J. ACCOUNTANCY, Mar. 1992, at 108, 108-111. The SEC has stated that the "consensus position represents the best thinking on areas for which there are no specific standards." *Id.*

within which businesses must operate. Financial statement disclosure of actual or potential environmental liability will serve as a check on corporate behavior in the environmental area and induce corporations to act more responsibly. This decade offers new challenges to the accounting profession's tradition and practice of self-regulation. It behooves the profession to take affirmative action on this issue and push for increased specificity and stringency in the current authoritative guidance.

