

## Environmental E-news

April 24, 2009

### Environmental Disclosures in Financial Reporting

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#### FAS 141R: A New Game in Town and Steps to Protect Your Company Against Improper Disclosure

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Accounting rules continue to evolve, especially in the area of environmental disclosures. Financial Accounting Standard ("FAS") 5, dealing with Accounting for Liabilities, has expanded to FAS 14, which offers guidance on the Reasonable Estimation of Loss to FIN 47, which addresses accounting for Conditional Asset Retirement Obligations ("AROs") and FAS 143 for Accounting for Asset Retirement Obligations and now FAS 141R for Business Combinations and FAS 157 for Fair Market Value Measurements.

Financial Staff Position ("FSP") FAS 141R-1 was issued on April 1, 2009 to address application issues regarding business combination contingencies. These business combination contingencies include initial recognition and measurement, subsequent recognition and measurement, and disclosure. FSP applies to business combination contingencies where the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008. In other words -- now.

#### Why is this important?

- The SEC scrutinizes corporate environmental disclosures.
- There is increased pressure to improve environmental financial reporting and disclosures from shareholders and others. Improper reporting invites shareholder lawsuits.

#### What is the change?

- A company must recognize assets acquired, liabilities assumed, and non-controlling interest at the acquisition date at fair value, as part of the transaction price.
- Contractual contingencies must be recognized at fair value.
- Non-contractual contingencies are recognized when deemed "more likely than not."

#### Dangers:

- There is a balance between auditors' need to know and attorney-client privilege.
- How do you collect information to determine "fair value" and maintain measurements of liability, yet keep confidential sensitive information, especially when involved in lawsuits?

You need to constantly think when you gather information about whether it is confidential information; and, if it is, take steps to keep it confidential. How do you keep this information confidential? First, work with your attorney to determine what unique privilege laws exist. Second, mark documents "attorney-client communication and privileged and confidential work product." Be careful to only mark documents that are truly confidential. Otherwise, the assertion is weakened. Third, utilize outside counsel to minimize the risk that the documents be considered business communications and, thus, less protected. Finally, be proactive. Don't wait for the suit. Otherwise, the privilege may have been waived.

Butzel Long is a sponsor of a seminar on this topic. The seminar is on Wednesday, June 10, 2009 at Walsh College in Troy, MI. For full details and registration information, please visit: [http://www.butzel.com/evcur.cfm?E\\_ID=160&ET\\_ID=1](http://www.butzel.com/evcur.cfm?E_ID=160&ET_ID=1)

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