

ENVIRONMENTAL & PRODUCT LIABILITY DISCLOSURE: Brattle Survey Shows an Array of Inconsistent Practices

INTRODUCTION

Since the passage of the Sarbanes-Oxley Act in 2002, companies have been paying more attention to the disclosure of environmental and product liability matters. However, the debate continues regarding the scope of disclosure and the necessity of formal SEC rule revisions.

After more than a decade of engaging in cases involving environmental and product liability estimation and disclosure, The Brattle Group sponsored a web-based survey to benchmark the current attitudes, practices, challenges, and trends relating to this area. This newsletter summarizes the results of the survey, focusing on the extent to which companies disclose liabilities, define what is “material,” and are aware of recent and proposed changes in disclosure standards, guidance, and procedures.

Copyright © 2006 The Brattle Group, Inc.

For more information on The Brattle Group’s work in environmental and product liability estimation and disclosure, please contact Gayle S. Koch in Cambridge at 617.864.7900.

Current securities regulation and accounting guidance require that companies disclose the “material” financial effects of their liabilities, including those relating to the environment and products manufactured, used, or sold. However, there has been much debate about the clarity and specificity of these requirements, the extent to which companies are complying with these requirements, and the necessity for changes. For example:

- The U.S. Government Accountability Office (GAO) released a report in July 2004 which recommended that the Securities and Exchange Commission (SEC) improve the tracking and transparency of environmental disclosure information and coordinate better with the U.S. Environmental Protection Agency (EPA). Environmental interest and investor groups asserted that the existing requirements allow too much flexibility and are too narrowly scoped to provide adequate disclosure. Reporting companies, however, generally viewed the existing requirements as sufficiently well defined, with the flexibility needed to accommodate individual circumstances.
- Environmental organizations are campaigning for stronger and more specific disclosure requirements, such as the Rose Foundation for Communities and the Environment’s petition to the SEC for the adoption of liability estimation and disclosure standards issued by the American Society of Testing and Materials (ASTM) International.
- But some companies maintain that developing more specific guidance is not feasible. They claim that international market forces — not additional SEC, legal, or accounting requirements — ensure and drive adequate and evolving disclosure practices. Such market forces include initiatives by industry groups to establish corporate social responsibility and citizenship standards, demands from shareholder and investor groups for greater disclosure, and new insurance policy exclusions for securities law violations by corporate officers.
- The adoption of the Sarbanes-Oxley Act has bolstered the importance of proper and adequate disclosure controls and procedures with the threat of civil and criminal penalties for noncompliance. The passage of the Financial Accounting Standards Board (FASB) Interpretation No. (FIN) 47, affecting accounting for asset retirement obligations, also promises to have an impact on disclosures.