MESSAGE FROM THE CO-CHAIRS

Jeffrey A. Smith
Thomas M. McMahon

Welcome to our first Newsletter.

Environmental disclosure issues have been around since the early 1970s, when the SEC first adopted regulations specific to environmental matters. For most environmental practitioners, the issues have largely resided in a murky backwater, only occasionally rising to the surface. Recent developments, however, are forcing environmental disclosure issues to the surface on an almost daily basis. The issues include both mandatory (i.e., SEC and accounting) disclosure and the voluntary disclosure that is demanded by environmental and investor stakeholder groups and increasingly is becoming part of the stakeholder communications package of multinational companies.

We intend that this new Committee, its Newsletters, Web site, list serve and programs, become the source of “everything you need to know” about environmental disclosure, both mandatory and voluntary. We are not there yet, but we feel this Newsletter is a good beginning.

The Newsletter starts with a description of the scope of the Committee’s area of responsibility. Next are two articles. The first describes the powerful confluence of three forces – old rules, new rules and growing market demand for “transparency” in environmental disclosure. The second article addresses a proposed SEC rule on accounting estimates that, whether ultimately adopted or not, may have a significant impact on the relationship between litigation risk analysis and environmental disclosure. Next we describe a “primer” posted to our Web site explaining in more detail the fundamentals of mandatory environmental disclosure required by SEC and accounting guidance, as amplified by Sarbanes-Oxley. Then you will find a description of the Links page on our Web site that provides direct access to many helpful Web sites dealing with both mandatory and voluntary disclosure, as well as an annotation of the links so that you can begin your search in the right place. Then we provide a description of several programs we have in the works. We also describe our Web site and list serve, explaining that they are intended to be a resource and a forum for questions and comments about environmental disclosure. And there are messages from our Newsletter and Membership vice-chairs soliciting contributions for future newsletters and offering assistance to those who want to become members of the Committee. Finally,
The Special Committee on Environmental Disclosures Newsletter
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Scott D. Deatherage, Editor

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This newsletter is a publication of the ABA Section of Environment, Energy, and Resources, and reports on the activities of the committee. All persons interested in joining the Section or one of its committees should contact the Section of Environment, Energy, and Resources, American Bar Association, 750 N. Lake Shore Drive, Chicago, IL 60611.

we introduce our leadership team of vice-chairs and liaisons. As always, we welcome any input or comments.

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THE SCOPE OF THE SPECIAL COMMITTEE ON ENVIRONMENTAL DISCLOSURE: Mandatory Disclosure Pursuant to SEC and Accounting Requirements; Voluntary Disclosure as Increasingly Demanded by Stakeholders

The Committee’s scope will include, most obviously, the environmental disclosure mandated by the Securities and Exchange Commission and by related accounting guidance. In addition, we will also focus on the increasingly important area of voluntary environmental disclosure, and on the intersection between mandatory and voluntary disclosure. Finally, we will look at environmental disclosure issues arising in the international arena, and the consequences for multinational companies, global business, and investors and other stakeholders around the world.

Specifically, the Committee’s scope includes the following:

1. Legally mandated SEC and financial disclosure of environmental matters
   - SEC rules
   - Accounting rules
The consequences of Sarbanes-Oxley (e.g., new disclosure controls, procedures and protocols)
- Liability of corporations, officers and directors for inadequate disclosures
- Corporate disclosure obligations in response to stakeholder initiatives

2. Voluntary disclosure of environmental matters
- Annual corporate reports pursuant to individual corporate policy
- Annual corporate reports pursuant to CERES/GRI and comparable initiatives
- External corporate communications pursuant to ISO 14063
- Rating entity initiatives, e.g., Innovest, IRRC
- Other “social responsibility” and “transparency” initiatives by investor/environmental groups, NGOs and stock exchanges
- Legislative and regulatory developments

3. The inter-relationship between mandated disclosure and voluntary disclosure
- Standard of care and extent of inquiry
- Potential liability for
  - Corporations, officers and directors
  - Rating agencies

4. Transborder issues arising from EU, Canadian and other international disclosure initiatives

ENVIRONMENTAL DISCLOSURE IS IN INTERESTING TIMES – THE POWERFUL CONFLUENCE OF THREE FORCES

Jeffrey A. Smith

In the words of the Chinese curse, environmental disclosure is in interesting times. The powerful confluence of three forces - old rules, new rules and growing market demand for “transparency” – combined with the power of electronic media to assemble and broadcast information, has upped the disclosure ante in a remarkably short time.

The foundation for legally-mandated corporate disclosure of environmental issues is provided by Securities and Exchange Commission (SEC) regulations and generally accepted accounting principles (GAAP) governing the content of periodic reports to the SEC. While these general requirements have been in place for years, the adequacy of environmental disclosures has received increased attention in recent months in the wake of corporate accounting scandals and the enactment of the Sarbanes-Oxley Act of 2002. Sarbanes-Oxley demands a new integrity – both of result and in the information gathering leading to the result, a nettlesome focus for a field in which reliable measurement of costs, obligations and liabilities has long been problematic and elusive.

In addition to environmental disclosures to the SEC, an increasing number of companies also publish voluntary reports detailing their environmental performance over a reporting period of their own choosing. These disclosures may take the form of independent environmental, health and safety (EHS) reports, or may be included in more general reports on corporate responsibility or sustainable development initiatives. This article provides a brief overview of required
and voluntary corporate environmental disclosure. Corporate disclosure practices, which were already evolving rapidly, have reached the threshold of a new era.

**Background: SEC Reporting Requirements**

1. **Disclosure of Capital Expenditures (Item 101).** In its reports to the SEC, either in connection with a public offering of securities or in its periodic reports, a registrant must disclose any material effects that the costs of compliance with environmental laws and regulations may have on its earnings, capital expenditures and competitive position. See, e.g., S.E.A. Release No. 5569; SEA Release No. 11236, 1975 SEC Lexis 2271. The SEC also requires registrants to project costs of environmental compliance for two years and to compare these costs to those of its competitors. See id.

2. **Disclosure of Legal Proceedings (Item 103).** The SEC requires registrants to disclose administrative or judicial proceedings arising under environmental laws if: (a) the proceeding is material to its business or financial condition; (b) it includes a claim for damages or costs in excess of 10 percent of current consolidated assets; or (c) a governmental authority is a party to the proceeding, or is known to be contemplating a proceeding, unless any sanctions are reasonably expected to be less than $100,000.

3. **Management Discussion and Analysis (Item 303).** The SEC views MD&A disclosure as an opportunity to give investors “a look at the company through the eyes of management.” Roberts, *Update on Environmental Disclosure* (speech before Colo. Bar Ass’n, Sept. 28, 1991). Generally, a company must disclose “currently known trends, events and uncertainties that are reasonably expected to have material effects” on the company. S.E.A. Release 6211, 52 Fed. Reg. 13715, 13717 (April 26, 1987), 1980 SEC Lexis 1523. Disclosure is optional when management is anticipating “a future trend or event, or anticipating a less predictable impact of a known trend, event or uncertainty.” Id.

4. **Accounting Requirements.** In addition to the SEC reporting requirements, GAAP compels accrual and disclosure of environmental costs in financial statements in certain circumstances. For example, FASB No. 5 mandates that a loss contingency be accrued by a charge to income and the nature of the contingency be described in a footnote if:
   (a) it is probable that a loss has been incurred; and
   (b) the amount of the loss can be reasonably estimated.

   If a loss contingency is only reasonably possible, or if the loss is probable but the amount cannot be reasonably estimated, then the loss contingency need not be accrued, but the nature of the loss contingency must be disclosed in a footnote. Further, SEC Staff Accounting Bulletin (SAB) No. 92 requires detailed disclosure of material environmental loss contingencies in the notes to a registrant’s financial statements. Contingent environmental losses must be accrued through a charge to income when it is probable that a liability has been incurred and the amount of the liability can be estimated. Such liabilities must be recorded separately from any expected insurance recoveries or rights of contribution or indemnity.

**The Sarbanes-Oxley Act: Raising the Stakes**

In response to high profile accounting controversies, such as those surrounding
Enron and WorldCom, Congress passed the Sarbanes-Oxley Act with the goal of imposing direct accountability upon corporate officers for their company’s public disclosures. The Sarbanes-Oxley Act did not directly alter the environmental disclosure requirements outlined above; however, it did provide several critical additions to the existing regulatory framework. Most notably, Section 302 of the Sarbanes-Oxley Act mandates that specified corporate officers, usually the CEO and CFO, certify each quarterly and annual report filed with the SEC. Specifically, these corporate officers must certify that each report filed with the SEC meets all requirements of the Securities Exchange Act of 1934, and that information contained in the report fairly represents in all material respects the financial condition and results of operations of the company. In addition, the CEO and CFO must also certify that:

(i) they have reviewed the report;
(ii) based on their knowledge, no untrue statements of material fact are contained in the report, nor does the report fail to state a material fact necessary to make the statements in the report not misleading; and
(iii) the financial information provided in the report fairly reflects in all material respects the financial condition and results of operations of the company.

In connection with these requirements, the certifying officers are responsible for establishing and maintaining internal controls to ensure that material information is made known to the officers during the period covered by the periodic reports. While Sarbanes-Oxley does not specifically refer to the disclosure of environmental (or any other) liabilities and expenditures, the broad language of the Act requires management to track environmental liabilities and expenditures and to ensure such matters are adequately disclosed to investors and the public. This new emphasis on process comes at the same time that the demands of shareholders, NGO’s and other stakeholders for enhanced environmental information have reached critical mass, representing a market stake measured in the trillions of dollars.

Finally, and some would argue, most pointedly, under Section 906 of the Sarbanes-Oxley Act, each periodic report that is filed under the Securities Exchange Act and that contains financial statements must also contain a certification by the CEO and CFO of the issuer that (a) the periodic report fully complies with the requirements of Section 13(a) or 15(d) of the Exchange Act and (b) information contained in the periodic report fairly presents, in all material respects, the financial condition and results of operations of the issuer. Section 906 imposes criminal liability for false certifications.

**Potential Impacts on Future Environmental Disclosures**

The convergence of a well-defined regulatory regime governing environmental disclosure and the new corporate governance regime may create a climate for more stringent regulation of public environmental disclosures. There are several recent indications that this is true.

1. *Congressional Interest.* Through a letter dated Oct. 10, 2002, Sens. Corzine, Lieberman and Jeffords asked the General Accounting Office (GAO) to weigh in on the debate regarding environmental disclosures. Specifically, the letter requests information regarding, among other topics, (a) the effectiveness of SEC requirements governing the disclosure of environmental liabilities, (b) current compliance with those requirements, and (c) the substance of the disclosure provided to shareholders versus the hard data on environmental liabilities prepared...
by market analysts and insurers. The letter also asks the GAO to identify changes to existing requirements that would encourage increased environmental disclosure. In July 2003, Sen. Corzine presided over a symposium, at which Sen. Nelson and SEC Commissioner Goldschmid also spoke, on environmental and social disclosure. In February 2004, GAO promulgated a questionnaire designed to probe the marketplace and all stakeholders for their views of the adequacy of environmental disclosure standards.

2. **Public Interest Initiatives.** Over the past few years, several public interest groups have filed petitions with the SEC requesting heightened enforcement of existing environmental disclosure requirements and/or the adoption of more stringent regulations. Most recently, the Rose Foundation for Communities and the Environment filed a petition in September 2002 urging the SEC to adopt new rules governing the disclosure of financially significant environmental liabilities. The petition suggests that proposed rules should incorporate two standards previously published by the American Society for Testing and Materials International (ASTM): “2001 Standard Guide for Disclosure of Environmental Liabilities” and “2001 Standard Guide for Estimating Monetary Costs and Liabilities for Environmental Matters.”

Other public interest groups have focused their efforts on specific companies or industries. For example, Friends of the Earth has a history of identifying and pursuing what it perceives to be inadequate disclosure of environmental risks. In March 2001, Friends of the Earth asked the SEC to investigate the alleged failure of Scotts Company to disclose trends in United Kingdom regulations that, in the group’s view, were potentially material to Scotts’ peat extraction business. The group subsequently published a report in September 2002 concluding that companies in certain industries, including the petrochemicals, utilities, automobile and oil and gas industries, did not report material environmental issues facing the companies, such as climate change. See Michelle Chan-Fishel, Friends of the Earth, Survey of Climate Change Disclosure in SEC Filings of Automobile, Insurance, Oil & Gas, Petrochemical, and Utilities Companies (2002). Similarly, the World Resources Institute published a report in 2000 concluding that the pulp and paper industry does not adequately disclose environmental risks. See Robert Repetto and Duncan Austin, World Resources Institute, Coming Clean: Corporate Disclosure of Financially Significant Environmental Risks (2000).

3. **SEC Enforcement.** Since the early 1990s, SEC enforcement actions alleging inadequate environmental disclosure have been virtually non-existent. At the 2001 Annual Meeting of the American Bar Association, however, the SEC announced its intention to focus on annual reports for violations of environment disclosure requirements. See Joseph McLaughlin, Security Law Highlights from the ABA Annual Meeting, Insights, Oct. 2001, at 30. Shortly thereafter, in March 2002, the SEC filed suit against Waste Management, Inc. alleging numerous violations of federal securities laws. Among the charges, the SEC alleged that Waste Management had “established inflated environmental reserves (liabilities) in connection with acquisitions so that the excess reserves could be used to avoid recording unrelated operating expenses.” Sec. & Exchange Commission, Litig. Release No. 17435, Waste Management, Inc. Founder and
Five Other Former Top Officers Sued for Massive Earnings Management Fraud (2002). The case is in discovery.

4. **EPA Initiative.** In an effort to promote inter-agency cooperation, the federal Environmental Protection Agency also announced an environmental disclosure initiative to encourage compliance with SEC requirements. Perhaps the most significant component of this initiative to date has been the unveiling of a new database, publicly available on the EPA Web site. The database, called Enforcement and Compliance History Online or ECHO, identifies companies that are subject to ongoing enforcement actions, such as pending notices of violation or administrative proceedings. The list is directly provided to the SEC, and the two agencies have implemented procedures designed to foster open sharing of information regarding company-specific environmental liabilities.

**Conclusion**

Even if new regulation or enforcement initiatives are not in the immediate offing, the marketplace is receiving growing amounts of environmental information from a variety of sources. The increased attention to environmental disclosures in reports filed with the SEC comes at a time when many companies are reformulating their second or third generation of voluntary reporting of EHS performance, corporate social responsibility and sustainable development, and an increasing number are considering whether to begin such reporting.

Environmental issues are simultaneously a barometer for corporate citizenship, an empirical benchmark for performance in an industry group and a podium from which a public company can address how it wants itself to be perceived. Data, posturing and uncertainty are a highly combustible mix in a charged regulatory environment. We are in interesting times.

*Jeff Smith is a partner with Cravath Swaine & Moore LLP. Jeff is Co-Chair of the Special Committee on Environmental Disclosure, Section of Environment, Energy, and Resources, American Bar Association.*

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**ESTIMATION OF ENVIRONMENTAL LIABILITIES FOR PURPOSES OF ACCRUAL AND DISCLOSURE: RECENT DEVELOPMENTS**

**Thomas M. McMahon**

It can often be extraordinarily difficult to estimate environmental liabilities for purposes of accrual and disclosure in financial statements and SEC filings. This article is a brief alert to interested readers about recent developments in the area. The Special Committee on Environmental Disclosure will address this subject in more detail in the months ahead.

As discussed Jeff Smith’s article elsewhere in this Newsletter, and in the Primer posted to this Committee’s Web site, guidance for the estimation of environmental liabilities can be found in various accounting and SEC documents that have been on the books for many years. However, a variety of recent factors, some having nothing directly to do with environmental issues, may necessitate a new look at the estimation issue.

In late 2001, during the unfolding of the Enron matter, the SEC issued a release entitled “Cautionary Advice Regarding Disclosure About Critical Accounting Policies” (Release Nos. 33-8040; 34-45149; Dec. 12, 2001). The Release reminded public companies that SEC rules governing Management’s Discussion and Analysis (MD&A) in SEC filings require
disclosure about “trends, events or uncertainties” known to management that would have a material impact on reported financial information. The Release went on to say that “the implications of those uncertainties for the methods, assumptions and estimates used for … accounting measurements” (emphasis added) have not always been properly addressed, and urged companies to correct any such deficiencies in their MD&A disclosure. Environmental uncertainties were mentioned as one example.

Then, in May 2002, the SEC proposed an elaborate rule that would require public companies to broaden the scope of disclosure required in the MD&A to include detailed narrative disclosure about “critical accounting estimates.” (“Disclosure in Management’s Discussion and Analysis about the Application of Critical Accounting Policies; Release No. 33-8098; May 10, 2002). In this proposal, a “critical accounting estimate” is defined as an “approximation” by management about a matter that is “highly uncertain” at the time the estimate is made, and under circumstances where different estimates that management reasonably could have used would have a material impact on the company’s financial condition or results of operations. This definition would include large (i.e., “material”) and uncertain (i.e., difficult or impossible to estimate) contingent liabilities of any kind, including Superfund liabilities, liabilities that stem from environmental regulatory uncertainties or litigation, toxic tort liabilities and the like.

If adopted in its current form, the new rule would require company management to identify and describe all “critical accounting estimates,” and for each estimate disclose the following: the methodology underlying the estimate; the assumptions concerning “highly uncertain” matters; “known trends, demands, commitments, events or uncertainties that are reasonably likely to occur and materially affect the methodology or assumptions”; reasons that different estimates could have been used; and reasons why the estimate is reasonably likely to change from period to period with a material impact on the financial presentation.

In addition, the proposal would require a quantitative analysis intended to show the “sensitivity” of a company’s financial presentation to changes in the assumptions used in the estimates. Two methods would be permitted for purposes of the “sensitivity analysis.” One would require the company to assume that “reasonably possible” changes in assumptions will occur over the following year. The other would require the company to assume “that the accounting estimate was changed to the upper end and the lower end of the range of reasonable possibilities” used by the company in recording its accrual, and would require quantification of the dollar impact on the company’s financial condition if, for example, a Superfund liability were to be accrued at the high end of the range (rather than the low end of the range).

The preamble to the proposal also states: “For purposes of the sensitivity analysis, a company should disclose, if known or available, the likelihood of occurrence of the changes it selects, such as the estimated probabilities of occurrence or standard deviations where applicable.” While the preamble is not part of the proposed rule itself, and its meaning is not clear, it may refer to probabilistic approaches to evaluating uncertainty, such as “decision tree” analyses.

If indeed the SEC is suggesting that probabilistic analyses should be disclosed, at least in certain cases, then the proposed rule may intersect with an American Society of Testing and Materials (ASTM) standard published in May 2001, entitled “Standard Guide for Estimating Monetary Costs and

continued on page 10...
New from ABA Publishing and The Section of Environment, Energy, and Resources

Mark A. Ryan, editor

This updated guide is the definitive resource to the provisions and complexities of the federal Clean Water Act and how it continues to evolve. Recent court rulings and the change of administration have resulted in significant changes that dramatically affect practitioners working in the area. This new edition provides detailed explanations of these changes and considers the impact of recent court decisions, including the Supreme Court’s decision in SWANCC and the Court of Appeals decisions in American Mining Assoc., Talent Irrigation, and Forsgren, among others. Beginning with an overview of the law’s provisions and pertinent regulation and enforcement issues, the subsequent chapters address specific issues, such as:

- NPDES permits
- Control of publicly owned treatment works
- Requirements applicable to indirect discharges
- The regulation of wetlands and the impact of recent judicial decisions
- Oil and hazardous substance spills
- Enforcement options under Section 309
- Judicial review

Chapters begin with a section on applicability and scope. Within each fully annotated chapter, clear explanations of specific statutory and regulatory provisions and court decisions applicable to the issue are presented in the order needed for full and accurate analysis – a virtual checklist of requirements and considerations. Making this new edition more useful than ever, the authors reference URL addresses for quick, up-to-the-minute information on government documents that are often difficult to locate.

2003  6 x 9  336 pages
Product Code:  5350099
Price: Section of Environment, Energy, and Resources members $79.95; Regular $95.00

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Liabilities for Environmental Matters” (ASTM Standard E 2137-01). This standard advocates the use of a probabilistic decision tree approach for estimating certain environmental matters.

The ASTM Standard specifically states it “does not address the establishment of reserves or disclosure requirements” of the SEC. However, in August 2002, the Rose Foundation, an investor group, filed a petition with the SEC seeking to have the ASTM Standard be adopted as an SEC rule. A link to the Rose Foundation petition appears on the Committee’s Web site, on the “Links” page. To date, the SEC has taken no action on the petition.

The comment period on the proposed rule has closed. Many comments were received; and it is not known what action the SEC will take or when.

However, in December 2003, the SEC issued additional guidance on what should be disclosed in the MD&A. (“Interpretation: Commission Guidance Regarding Management’s Discussion and Analysis;” Release Nos. 33-8350; 34-48960; Dec. 29, 2003.) The Interpretation generally reiterated the positions taken in the December 2001 Cautionary Advice and the May 2002 proposed rule, adding that the proposed rule regarding “critical accounting estimates” remains under consideration.

Tom McMahon is a retired partner with Sidley Austin Brown & Wood (SABW). He is co-chair of the recently created Special Committee on Environmental Disclosure, Section of Environment, Energy, and Resources, American Bar Association. The views he expresses are not necessarily those of SABW or the Special Committee on Environmental Disclosure, Section of Environment, Energy, and Resources, American Bar Association.

CALIFORNIA PUTS PENSION POWER TO WORK FOR ENVIRONMENTAL TRANSPARENCY

Jeffrey A. Smith
David J. Mandl

On Feb. 3, 2004, the California state treasurer, Phil Angelides, announced a “Green Wave” Environmental Investment Initiative (Initiative), touted as an effort to bolster financial returns to state pension funds, create jobs and clean up the environment. The initiative calls upon the state’s two large public pension funds – the California Public Employees’ Retirement System (CalPERS) and the California State Teachers’ Retirement System (CalSTRS) – to earmark investment funds for environmentally responsible companies and environmentally-friendly technologies. The self-proclaimed goal of the initiative is to “improve long-term financial returns for pensioners and taxpayers through investments in the burgeoning environmental technology sector, while also reducing the risks to the pension funds posed by corporate environmental liabilities.”

Angelides is a board member of both funds, increasing the likelihood that he will see his plan through to adoption.

The four-pronged plan would likely have a significant impact on the investment strategy of the two funds, which, with combined assets of approximately $250 billion, represent the largest (CalPERS) and third-largest (CalSTRS) public pension funds in the nation. Under the first prong of the Initiative’s mandate, the two funds would encourage corporations to provide “meaningful, consistent and robust” disclosures of their environmental practices, risks and liabilities. Potential mechanisms for achieving these goals include opening dialogue with corporate decision-makers through shareholder resolutions, as well as joining other investor groups in urging the SEC to strengthen environmental disclosure requirements.
Under the Initiative’s second prong, the funds would seek investment opportunities in sectors promoting environmentally-friendly technologies. The Initiative calls for the two funds to invest a combined $500 million in private equity investments, venture capital and project financing to develop so-called “clean” technologies. Through such focused investments, Angelides foresees positive, long-term returns, while simultaneously creating jobs and promoting economic growth.

Prong three seeks to promote investment in environmentally responsible companies. The Initiative urges the funds to invest a combined $1 billion in mutual funds that implement an environmental screening mechanism. Such a policy would send a signal about the added value of “responsible, forward-looking environmental practices.” Citing various studies that suggest that environmentally screened funds out-perform those funds that do not implement such screening, Angelides argues that increased investments in screened funds will not only promote corporate environmental responsibility, but will also provide the opportunity for enhanced financial returns.

The fourth and final prong of the Initiative urges the funds to complete a comprehensive audit of their real estate portfolios to identify additional opportunities to use clean energy, energy efficiency and green building standards and practices to reduce long-term costs and boost long-term value. Currently, the two funds have combined real estate investments of nearly $16 billion. Angelides hopes to motivate superior building practices through strategic investments in environmentally-friendly real estate opportunities.

CalPERS has already begun researching investment opportunities to satisfy the goals of the Initiative; however, neither fund has voted on whether to adopt it. The Initiative will be presented to the boards of each fund in March, and a vote on adoption would likely follow this summer.

Dave Mandl is an associate in the environmental practice group at Cravath, Swaine & Moore LLP.

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AMERICAN BAR ASSOCIATION
SECTION OF ENVIRONMENT, ENERGY, AND RESOURCES

Calendar of Section Events

33rd Annual Conference on Environmental Law
March 11-14, 2004
Keystone, Colorado

Eastern Water Resources: Law, Policy and Technology
May 6-7, 2004
Hollywood, Florida

Wetlands Law and Regulation
May 19-24, 2004
Washington, D.C.
(Com-sponsored with ALI-ABA and ELI, for information call 800/253-6397)

ABA Annual Meeting
August 5-11, 2004
Atlanta, Georgia

12th Section Fall Meeting
October 6-10, 2004
San Antonio, Texas

For more information, see the Section Web site at http://www.abanet.org/environment or contact the Section at 312/988-5724.
SAVE THE DATE!

EASTERN WATER RESOURCES:
LAW, POLICY AND TECHNOLOGY
MAY 6-7, 2004
WESTIN DIPLOMAT RESORT AND SPA
HOLLYWOOD, FLORIDA

Given the myriad issues evolving in eastern water law, the Section has developed a new program – Eastern Water Resources: Law, Policy and Technology – to provide practitioners with the most current information and perspectives. It will be one of the first major conferences to focus solely on water resources issues in the eastern United States.

Plenary sessions will include:
- an introduction to eastern water law issues highlighting current laws affecting water allocation in the East and recent trends among eastern states to modify their laws;
- a panel featuring the latest precedent-setting cases, including the recent U.S. Supreme Court decision in the water rights fight between Maryland and Virginia and key cases being litigated in a number of lower courts;
- a session on lessons to be learned from the western states;
- a session focusing on the increasing interplay between water quantity/water quality/endangered species issues featuring the recent Missouri River controversy; and
- a panel on the problems/permitting issues involved in trans-basin movement of water focusing on the litigation in the Miccosukee case currently before the Supreme Court and the Trout Unlimited case that has the potential to severely impact the provision of water to New York City.

There will also be a luncheon presentation on the everglades restoration project, one of the largest public works projects ever undertaken by the Army Corps.

Break-out sessions topics will include:
- legal issues involved in the everglades project;
- privatization of water supplies;
- watershed management;
- eastern compacts and interstate agreements; and
- ethics.

For more information about these programs, please visit ther Section Web site: http://www.abanet.org/environ/ or contact the Section at 312/988-5724 or environ-registrar@abanet.org.
COMMITTEE NEWS

Upcoming Environmental Disclosure Programs Sponsored by the Committee

We have gotten off to a quick start, with a lot of help from our friends. Jeff Smith, one of our Co-chairs, is on a panel at Section’s 33rd Annual Conference on Environmental Law at Keystone, Colorado, entitled “What’s Driving Corporate Environmental Disclosure and Where It’s Going.” The panel is chaired by Bob Sussman, now of Latham & Watkins in Washington, D.C., and includes Richard Harris from ChevronTexaco, David Monsma from Business for Social Responsibility in San Francisco and Riva Krut from Cameron-Cole, a leading consultant on environmental disclosure issues.

In collaboration with the Section’s International Environmental Law Committee we have a slot at the 2004 ABA Annual Meeting in Atlanta on global corporation environmental disclosure issues, including the Global Reporting Initiative, the surveys of global environmental reporting sponsored by the United Nations Environmental Programme, various unilateral initiatives by governments in the European Union as well as the U.S. regulatory components of the ongoing evolution of disclosure issues. As this Newsletter goes to press, we are putting together a first class panel, and we are looking forward to a highly stimulating program.

How to Join the Committee

If you have any interest in the subject of environmental disclosure, please join the Committee. The only prerequisites are that you be a member of the ABA and the Section of Environment, Energy, and Resources (you do not have to be a lawyer). To join, you may go to the following Web page: http://www.abanet.org/environ-committees/signup.html.

If you have any problems, or if you have any questions about the Committee, please contact the membership vice-chair: Fern Fleischer Daves, Environmental Counsel, ITT Industries at 914/641-2148 or Fern.Daves@itt.com.

The Committee Newsletter

We hope the Newsletter of the Special Committee on Environmental Disclosure will serve as a leading source of articles, discussion, and information on the developing issues relating to corporate environmental disclosure. As the effects of Sarbanes-Oxley and the growing corporate voluntary disclosure of environmental, sustainability, and corporate social responsibility evolve and emerge, we hope to have leading edge thinking and analysis on these developments expressed in the articles that we publish.

Newsletter vice-chair Scott Deatherage practices environmental law at Thompson & Knight in Dallas, Texas. He started his career path with plans of becoming an ecologist, but departed that path to pursue environmental law. A lasting influence of his ecological background has been a profound interest in the means by which laws and corporate behavior evolve in the greater context or “ecosystem “ of the influence of government, stakeholders, and market participants. He looks forward to participating in and observing the evolution of corporate environmental governance, corporate social responsibility, and how they are expressed in environmental and social responsibility reporting.

If you have an interest in publishing an article in the Newsletter of the Special Committee on Environmental Disclosure, please contact Scott Deatherage at Suite 3300, 1700 Pacific Ave., Dallas, Texas, 214/969-1206 or scott.deatherage@tklaw.com
The Committee’s Web Site and List Serve

Web Site

The Committee’s Web site, a resource for information about environmental disclosure, has a goal of providing both a place for “where to start your research” links and materials to update and explain the background and current developments in environmental disclosure responsibilities. We now have the Primer (a modified and updated “PowerPoint”) and a new Links page up on the site. The Web site is located at http://www.abanet.org/environ/committees/environdisclosures/home.html.

Primer on Mandatory Environmental Disclosure: A PowerPoint Presentation Explaining the Longstanding SEC Regulations as Amplified by Sarbanes-Oxley

SEC regulations and authoritative accounting guidance dealing specifically with disclosure of environmental liabilities have been in effect since the 1970s, and have been updated on various occasions throughout the 1980s and 90s. Taken all together, they constitute an impressive body of requirements. Unfortunately, they have not been promulgated in a cohesive fashion, and it has been difficult for environmental practitioners to sort through and comprehend the requirements.

And then came Sarbanes-Oxley. This statute, and its blizzard of implementing SEC regulations, has made it urgent for all environmental practitioners to understand what is required to be reported pursuant to SEC and accounting standards.

The Committee Web site contains a “primer” that will help you to understand both the SEC and accounting requirements, including the very substantial impact Sarbanes-Oxley has on these requirements.

Links to Helpful Web Sites Relating to Environmental Disclosure Issues

Our Links page is the result of several years of research in the area of environmental disclosure and provides our top tier of useful information on mandatory and involuntary environmental disclosure. We have annotated the list so that you can find your way around more easily. You will also note that many of the sites themselves contain links. We have tried to provide sites that are the most useful portals for baseline research in the area. The Links page in particular provides a brief explanation of just what to expect to find at each of the sources/sites provided.

Please send us suggestions on additional sources for information on environmental disclosure responsibilities and for tracking this developing field. We’ll review them and merge them into the current structure. Similarly, suggestions on material which should be available on the page are greatly appreciated.

List Serve

The Committee’s list serve is a forum for comments and questions about environmental disclosure. The list serve, addressable by sending regular e-mail to environ-environ_disclosures@mail.abanet.org, is made up of about 50 Committee members, who are interested in engaging in discussion of the problems and issues involved in disclosure and reporting. This is a closed list only open to Committee members. By joining the Committee, you will be added to the list serve, if the ABA has a current e-mail address for you and you have not placed any restrictions on your e-mail that would preclude you from receiving mail from the list serve.

You can join the Committee from the committee sign-up page on the Section of Environment, Energy, and Resources Web
site at http://www.abanet.org/environ/committees/signup.html, or by contacting the Section office at 312/988-5625 or environ@abanet.org. Please note that you need to be a member of both the ABA and the Section of Environment, Energy, and Resources to join the Committee.

Technology vice-chair John Tatum is primarily involved in facilitation and mediation of environmental matters, particularly allocation at Superfund sites. He is a vice chair of the Section’s Alternative Dispute Resolution Committee and this Committee. As a result of a misspent youth as a programmer, he has been involved in a number of environmental technology and Web efforts. He can be reached via www.tatum.com or at John L. Tatum, PC, 4931 Ranch Lane, Bloomfield Hills, Michigan 48302

Introducing the Vice-Chairs and Committee Liaisons

The Committee has been fortunate to attract a strong leadership team. They include:

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