

disclosure of any material limitations of that recovery.

- Uncertainties regarding the legal sufficiency of insurance claims or solvency of insurance carriers.²
- The time frame over which the accrued or presently unrecognized amounts may be paid out.
- Material components of the accruals and significant assumptions underlying estimates.

Registrants are cautioned that a statement that the contingency is not expected to be material does not satisfy the requirements of Statement 5 if there is at least a reasonable possibility that a loss exceeding amounts already recognized may have been incurred and the amount of that additional loss would be material to a decision to buy or sell the registrant's securities. In that case, the registrant must either (a) disclose the estimated additional loss, or range of loss, that is reasonably possible, or (b) state that such an estimate cannot be made.

Question 3: What disclosures regarding loss contingencies may be necessary outside the financial statements?

Interpretive Response: Registrants should consider the requirements of Items 101 (Description of Business), 103 (Legal Proceedings), and 303 (MD&A) of Regulations S-K and S-B. The Commission has issued interpretive releases that provide additional guidance with respect to these items.³ In a 1989 interpretive release, the Commission noted that the availability of insurance, indemnification, or contribution may be relevant in determining whether the criteria for disclosure have been met with respect to a contingency.⁴ The registrant's assessment in this regard should include consideration of facts such as the periods in which claims for recovery may be realized, the likelihood that the claims may be contested, and the financial condition of third parties from which recovery is expected.

Disclosures made pursuant to the guidance identified in the preceding paragraph should be sufficiently

specific to enable a reader to understand the scope of the contingencies affecting the registrant. For example, a registrant's discussion of historical and anticipated environmental expenditures should, to the extent material, describe separately (a) recurring costs associated with managing hazardous substances and pollution in on-going operations, (b) capital expenditures to limit or monitor hazardous substances or pollutants, (c) mandated expenditures to remediate previously contaminated sites, and (d) other infrequent or non-recurring clean-up expenditures that can be anticipated but which are not required in the present circumstances. Disaggregated disclosure that describes accrued and reasonably likely losses with respect to particular environmental sites that are individually material may be necessary for a full understanding of these contingencies. Also, if management's investigation of potential liability and remediation cost is at different stages with respect to individual sites, the consequences of this with respect to amounts accrued and disclosed should be discussed.

Examples of specific disclosures typically relevant to an understanding of historical and anticipated product liability costs include the nature of personal injury or property damages alleged by claimants, aggregate settlement costs by type of claim, and related costs of administering and litigating claims. Disaggregated disclosure that describes accrued and reasonably likely losses with respect to particular claims may be necessary if they are individually material. If the contingency involves a large number of relatively small individual claims of a similar type, such as personal injury from exposure to asbestos, disclosure of the number of claims pending at each balance sheet date, the number of claims filed for each period presented, the number of claims dismissed, settled, or otherwise resolved for each period, and the average settlement amount per claim may be necessary. Disclosures should address historical and expected trends in these amounts and their reasonably likely effects on operating results and liquidity.

Question 4: What disclosures should be furnished with respect to site restoration costs or other environmental remediation costs?⁵

Interpretive Response: The staff believes that material liabilities for site restoration, post-closure, and monitoring commitments, or other exit

costs that may occur on the sale, disposal, or abandonment of a property as a result of unanticipated contamination of the asset should be disclosed in the notes to the financial statements. Appropriate disclosures generally would include the nature of the costs involved, the total anticipated cost, the total costs accrued to date, the balance sheet classification of accrued amounts, and the range or amount of reasonably possible additional losses. If an asset held for sale or development will require remediation to be performed by the registrant prior to development, sale, or as a condition of sale, a note to the financial statements should describe how the necessary expenditures are considered in the assessment of the asset's value and the possible need to reflect an impairment loss. Additionally, if the registrant may be liable for remediation of environmental damage relating to assets or businesses previously disposed, disclosure should be made in the financial statements unless the likelihood of a material unfavorable outcome of that contingency is remote.⁶ The registrant's accounting policy with respect to such costs should be disclosed in accordance with Opinion 22.

Z. Accounting and Disclosure Regarding Discontinued Operations

1. Deleted by SAB 103
2. Deleted by SAB 103
3. Deleted by SAB 103
4. Disposal of Operation With Significant Interest Retained

Facts: A Company disposes of its controlling interest in a component of an entity as defined by Statement 144. The Company retains a minority voting interest directly in the component or it holds a minority voting interest in the buyer of the component. Controlling interest includes those controlling interests established through other means, such as variable interests. Because the Company's voting interest enables it to exert significant influence over the operating and financial policies of the investee, the Company is required by Opinion 18 to account for its residual investment using the equity method.¹

Question: May the historical operating results of the component and the gain or

² The staff believes there is a rebuttable presumption that no asset should be recognized for a claim for recovery from a party that is asserting that it is not liable to indemnify the registrant. Registrants that overcome that presumption should disclose the amount of recorded recoveries that are being contested and discuss the reasons for concluding that the amounts are probable of recovery.

³ See Securities Act Release No. 6130, FR 36, Securities Act Release No. 33-8040, Securities Act Release No. 33-8039, and Securities Act Release 33-8176.

⁴ See, for example, footnote 30 of FR 36 (footnote 17 of Section 501.02 of the Codification of Financial Reporting Policies).

⁵ Registrants are reminded that Statement 143 provides guidance for accounting and reporting for costs associated with asset retirement obligations.

⁶ If the company has a guarantee as defined by Interpretation 45, the entity is required to provide the disclosures and recognize the fair value of the guarantee in the company's financial statements even if the "contingent" aspect of the guarantee is deemed to be remote.

¹ In some circumstances, the seller's continuing interest may be so great that divestiture accounting is inappropriate. See SAB Topic 5.E.