



Fiscal Control over Physical Controls

By Greg Rogers, JD, CPA

New accounting rules may require owners of redeveloped brownfields to report continuing legal and financial obligations associated with risk-based site closures.

As risk-based programs for cleaning up contaminated properties become more common, many redeveloped brownfield sites will be subject to continuing post-closure obligations to maintain physical controls such as caps, slurry walls, sheet piling, hydraulic containment wells and interceptor trenches. Such controls are intended to reduce risks to human health and the environment by preventing exposure to unsafe levels of contaminants left in place.

Physical Controls

Risk-based site closures may impose two legal obligations under state or federal environmental laws. The first obligation is to maintain any physical controls relied upon by the regulatory agency in granting closure. Maintenance of physical controls may involve ongoing operating and maintenance (known as O&M) costs into perpetuity. This obligation is unconditional and can be quantified relatively easily.

The second obligation is to remove or decontaminate unacceptable levels of contamination in soil and groundwater should a physical control be removed or improperly maintained at some point in the future (e.g., demolition of a worn-out building that serves as a cap). This "reopener" obligation is conditional on one or more future events that may or may not be within the control of the property owner and is obviously more difficult to quantify.

Although physical controls may be expected to have long, useful lives, no asset will last forever (except land). Although conditional in nature, such obligations may nonetheless be subject to measurement and reporting under FASB Interpretation No. 47, "Accounting for Conditional Asset Retirement Obligations" (FIN 47).

Institutional Controls

Institutional controls (e.g., deed notices and restrictive covenants) imposing land use restrictions do not fall within the scope of FIN 47 for the reason that these controls are not themselves assets with finite lives that ultimately must be retired from service.

While institutional controls may reduce property marketability and value, they do not constitute a legal obligation associated with the future retirement of the associated property. Accordingly, there are no current requirements under generally accepted accounting principles (GAAP) to recognize liabilities for land use restrictions.

Continuing legal and financial obligations associated with physical controls used in risk-based closures may or may not be material to the financial statements of the property owner. Sophisticated property developers and

property managers, however, can be expected to consider carefully any ongoing O&M costs and potential reopener costs associated with sites closed under risk-based programs.

If such costs are relevant in making real estate business decisions, they also may be material for financial reporting purposes.

Obligations associated with physical controls, if material, may represent asset retirement obligations under GAAP. If so, property owners must report the liability in their financial statements in the period in which it is incurred (i.e., when a regulatory agency approves site closure subject to the physical control), if a reasonable estimate of the liability's fair value can be made. **BFN**

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Asset Retirement Obligations: A Primer

Statement of Financial Accounting Standards No. 143, "Accounting for Asset Retirement Obligations" (FAS 143), requires companies to recognize the fair value of a liability for an asset retirement obligation (ARO) in the period in which it is incurred if a reasonable estimate of fair value can be made.

AROs are legal obligations associated with the retirement of a tangible, long-lived asset (e.g., property, plant, and equipment) that result from the acquisition, construction, development and/or the normal operation of the asset. Retirement is defined as the other-than-temporary removal of a long-lived asset from service by sale, abandonment, recycling or disposal in another manner.