



## **OSC ANNOUNCES RESULTS OF REVIEW OF ENVIRONMENTAL REPORTING**

On February 29, 2008, the Ontario Securities Commission ("OSC") released OSC Staff Notice 51-716 –*Environmental Reporting* which summarized the findings of its review of environmental reporting required by issuers in their continuous disclosure documents pursuant to National Instrument 51-102 – *Continuous Disclosure Obligations* ("NI 51-102").

In conducting its three month targeted review, the OSC examined the disclosure record of 35 reporting issuers (22 of which were listed on the TSX; 13 of whom were Venture Issuers) operating in one of the following industries: environmental services, industrial products, mining, oil and gas, steel, transportation services, or utilities and for whom the OSC is the principal regulator.

The following is a brief summary of the OSC's findings in five reporting categories of continuous disclosure. For a complete discussion of the OSC review, please refer to the OSC Staff Notice 51-716 –*Environmental Reporting* (the "Notice") accessible at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

### **1. Financial liabilities related to the environment**

The OSC review compared the disclosure of financial liabilities related to the environment in the issuer's financial statements as well as potential environmental liabilities which were not included in the issuer's financial statements. The review found that many issuers included a general discussion of the environmental liabilities in their MD&A with minimal or no analysis. In other instances, some issuers only discussed potential liabilities if they had included these liabilities in their financial statements, whereas others omitted any discussion of potential environmental liabilities in their MD&A where such potential liabilities were not included in the issuer's financial statements.

In both instances, the OSC reminds issuers that where the issuer has included an estimate as to an environmental liability, the issuer should quantify the estimate where possible or provide a range of the upper and lower end of the estimates from which the estimate was recorded. Moreover, the discussion of any material potential or contingent liabilities should be included in the issuer's AIF and MD&A, regardless of whether the issuer has included such estimate in its

financial statements. This could include, for example, a situation where issuers may have several contingent environmental liabilities that have not been recognized because they are not individually material, but together may indicate an underlying risk or trend that could be material to the issuer in the long-term.

### **2. Asset retirement obligations**

The OSC review found that the disclosure of asset retirement obligations varied among issuers.

In seeking to provide meaningful information to investors, the Notice advises issuers that if an asset retirement obligation is material to an issuer, in addition to providing the required financial statement disclosure, the issuer should seek to enhance an investor's understanding by providing supplemental disclosure in its MD&A, including a comprehensive discussion of material commitments, events or uncertainties, including any asset retirement obligations that are reasonably likely to have an effect on the issuer's business.

### **3. Financial and operational effects of environmental protection requirements**

NI 51-102 requires issuers to disclose the financial and operational effects of environmental protection requirements on the issuer's capital expenditures, earnings and competitive position in the current financial year and the expected effect in future years. In reviewing the disclosure of those issuers which were required to file an AIF (22 of the 35 issuers reviewed), the OSC found that 14 issuers included disclosure about environmental protection requirements in their AIF, whereas 8 issuers omitted such disclosure entirely. Of those issuers that included such disclosure, the majority provided only a limited qualitative discussion of environmental protection requirements and did not quantify the costs or the impact or potential impact on financial and operational results. This qualitative disclosure was typically discussed in the context of a risk factor.

The OSC reiterated its view that in order to meet its continuous disclosure requirements, an issuer's AIF should, among other things, include a quantification of the costs associated with environmental protection requirements, and the impact or potential impact of

these costs on financial and operational results when such information is reasonably available. Boilerplate disclosure is insufficient to properly meet these requirements.

#### **4. Environmental policies fundamental to operations**

If an issuer has implemented environmental policies that are fundamental to its operations, NI 51-102 requires the issuer to describe these policies and the steps it has taken to implement them. The OSC found that disclosure of environmental policies varied significantly among issuers, with some issuers including a discussion of, among other things, various programs to prevent and control spills and protect water quality whereas others omitted such discussion entirely.

In discussing environmental policies fundamental to their operations, the OSC reiterated its view that issuers should evaluate and describe the impact or potential impact these policies may have on their operations and that boilerplate disclosure is insufficient to properly meet these requirements.

#### **5. Environmental risks**

The OSC found that 4 of the 22 issuers required to file an AIF omitted environmental risks as a risk factor entirely, despite being in an industry where environmental risks appear to be relevant.

In seeking to comply with its continuous disclosure obligations, an issuer should assess whether, due to the nature of its operations, it should address environmental risks in its continuous disclosure documents. In those instances where the issuer is not required to file an AIF, those risks should be disclosed in the issuer's MD&A. Ultimately, if any risks relating to environmental laws are material to an issuer's operations, whether national or international, the OSC would expect the issuer to include a detailed discussion of these laws.

#### **Conclusion**

The Notice provides guidance that reporting issuers should consider when discussing environmental matters in their continuous disclosure documents to ensure their disclosure is in compliance with securities legislation. In particular, issuers should consider the following when preparing the disclosure of environmental matters in their financial statements, MD&A and AIFs:

- Information relating to environmental matters is likely material if a reasonable investor's decision whether or not to buy, sell or hold securities of the issuer would likely be influenced or changed if the information was omitted or misstated.
- Issuers are encouraged to consider both quantitative and qualitative factors in determining materiality generally, and particularly for disclosure relating to environmental matters.
- In almost all instances, the OSC found that an issuer's use of boilerplate disclosure for the environmental reporting was insufficient of the purposes of meeting its continuous disclosure obligations.
- Issuers should note that the OSC review included a review of the issuer's websites for disclosure of information relating to environmental matters to determine if that disclosure was consistent with the disclosure their respective continuous disclosure documents.
- In providing the officer's certification of an issuer's financial statements required pursuant to Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*, the OSC reminds issuers that meaningful discussion of material environmental matters, where applicable, in an issuer's MD&A and AIF is important to achieve fair presentation of the issuer's financial condition in all material respects.
- The issuer's audit committee must also be satisfied that adequate procedures are in place for the review of the issuer's public disclosure of financial information extracted or derived from the issuer's financial statements, and must periodically assess the adequacy of these procedures. The OSC notes that this would also apply to the review of an issuer's financial statements and MD&A including any financial reporting related to material environmental matters, where applicable, by the issuer's audit committee pursuant to Multilateral Instrument 52-110 *Audit Committees*.

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*This update is intended as a summary only and should not be regarded or relied upon as advice to any specific client or regarding any specific situation. If you would like further information regarding the issues discussed in this update or if you wish to discuss any aspect of this commentary, please feel free to contact any of the following*

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