



January 5, 2012

**VIA EMAIL**

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Re: Securities Exchange Act of 1934 - Section 14(a), Rule 14a-8; Omission of Stockholder Proposal

Dear Ladies and Gentlemen:

I am writing on behalf of Alpha Natural Resources, Inc. ("Alpha" and sometimes referred to hereinafter as the "Company") to inform you, pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), that Alpha intends to omit from its proxy solicitation materials for its 2012 annual meeting of stockholders a stockholder proposal (the "Proposal") submitted by the State of New York, Office of the State Comptroller on behalf of the New York State Common Retirement Fund, the New York State and Local Employees' Retirement System and the New York State Police and Fire Retirement System (the "Proponent"). Copies of the Proposal and accompanying materials are attached as Exhibit A.

Alpha expects to file its definitive proxy statement for the 2012 annual meeting of stockholders in April 2012. Accordingly, as contemplated by Rule 14a-8(j), this letter is being filed with the Commission more than 80 calendar days before the date upon which Alpha expects to file the definitive proxy solicitation materials for the 2012 annual meeting of stockholders. We respectfully request that the Staff of the Division of Corporation Finance confirm that it will not recommend any enforcement action to the Securities and Exchange Commission (the "Commission") if the Company omits the Proposal from its 2012 proxy materials.

Pursuant to Staff Legal Bulletin No. 14D (November 7, 2008) ("SLB 14D"), I am submitting this request for no-action relief to the Commission under Rule 14a-8 by use of the Commission email address, [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov), and have included my name and telephone number both in this letter and the cover email accompanying this letter. In accordance with the Staff's instruction in Section E of SLB 14D and Rule 14a-8(j) under the Exchange Act, I am simultaneously forwarding, by email, a copy of this letter to the Proponent as formal notice of the Company's intention to exclude the Proposal from its 2012 proxy materials.

I. Background

The Proposal requests "that Alpha Natural Resources amend its written equal employment opportunity policy to explicitly prohibit discrimination based on sexual orientation and gender identity and to substantially implement the policy."

II. The Proposal Is Excludable Under Rule 14a-8(e)(2) Because It Was Not Received By Alpha At Its Principal Executive Offices Prior To The Deadline

Rule 14a-8(e) provides, in part, that for a regularly scheduled annual meeting, "[t]he proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the

**ALPHA APPALACHIA HOLDINGS, INC.**

[www.alphanr.com](http://www.alphanr.com)  
One Alpha Place  
P.O. Box 16429  
Bristol, VA 24209

company's proxy statement released to shareholders in connection with the previous year's annual meeting." The Company's 2011 annual meeting was held on May 19, 2011, and its 2011 proxy statement was first mailed to its stockholders on April 9, 2011. The Company's 2012 annual meeting will be held on May 17, 2012. Thus, Alpha needed to receive the Proposal from the Proponent not less than 120 calendar days before April 9, 2012, which was December 11, 2011. This requirement, including the specific date, was described in the section "*Stockholder Proposals For The 2012 Annual Meeting*" on page 14 of the Company's 2011 proxy statement, which is attached hereto as Exhibit B and states, in part, as follows: "[p]ursuant to Rule 14a-8 of the Exchange Act, in order to be included in the Company's proxy statement for the 2012 annual meeting, [stockholder] proposals must be received by Alpha no later than December 11, 2011...."

The Proposal was received at Alpha's principal executive offices on **December 12, 2011**, not on or prior to December 11, 2011, as reflected by the date stamp on the Proponent's letter accompanying the Proposal attached as Exhibit A. The Staff has strictly construed the Rule 14a-8(e)(2) deadline and consistently concurred with the exclusion of stockholder proposals pursuant to Rule 14a-8(e)(2) on the basis that such proposals were not timely submitted, even if those proposals were received only a few days, or even one day, after the deadline. The following companies were granted no action relief for proposals received one day after the deadline: *Smithfield Foods, Inc.* (June 4, 2007); *City National Corp.* (January 17, 2008); *Int'l. Business Machines Corp.* (December 5, 2006); *Thomas Industries Inc.* (January 15, 2003); *General Electric Co.* (December 22, 1997); *Bindley Western Industries, Inc.* (February 21, 1997). *See also, Alcoa Inc.* (January 12, 2009) (proposal received four days after the deadline); *Dominion Resources Inc.* (March 2, 2005) (proposal received two months after the deadline); and *Actuant Corporation* (November 26, 2003) (proposal received three months after the deadline).

To assist stockholders in meeting their burden, the Staff has stated that for stockholders "[t]o avoid exclusion on the basis of untimeliness, a shareholder should submit his or her proposal well in advance of the deadline and by a means that allows the shareholder to demonstrate the date the proposal was received at the company's principal executive offices." Division of Corporation Finance, Staff Legal Bulletin No. 14 (July 13, 2001). The Proponent did not submit the Proposal "well in advance" of the deadline, and, to the Company's knowledge, only sent the Proposal and accompanying letter to Alpha by regular U.S. mail with no means to confirm actual receipt of the Proposal at Alpha's principal executive offices. The Proponent did not follow the Staff's guidance in these regards and has therefore, submitted its proposal after the deadline.

Additionally, the Proponent indicated to Alpha that it typically submits its stockholder proposals to companies by facsimile transmission. However, upon a search of facsimiles received by my office, the corporate Secretary's office and the office and person to whom the letter accompanying the Proposal was addressed, no facsimile transmission of the Proposal was received on or before the deadline. The Proponent has also not produced proof of such a transmission after a request to do so by Alpha's Assistant Secretary. Additionally, there is no record of the Proponent submitting an inquiry to my office for my facsimile number on or prior to the deadline set forth in Alpha's 2011 proxy statement. The Staff provided specific guidance to stockholders submitting proposals via facsimile which guidance provides, in part, that if a stockholder submits a proposal by facsimile, "the shareholder proponent should ensure that he or she has obtained the correct facsimile number for making such submissions." Division of Corporation Finance, Staff Legal Bulletin No. 14C (June 28, 2005). In this guidance, the Staff recommends that stockholders contact the company to obtain the correct facsimile number because if "the facsimile number is incorrect, the shareholder proponent's proposal may be subject to exclusion on the basis that the shareholder proponent failed to submit the proposal or response in a timely manner." *See id.* If the Proponent submitted the Proposal to Alpha on or in advance of the stockholder proposal deadline by facsimile transmission, Alpha has no record of such facsimile transmission and the Proponent did not provide the Company with a confirmation that the facsimile submission of the Proposal occurred on or prior to the deadline.

The failure to timely submit a stockholder proposal is a deficiency that cannot be remedied, and, as such, the Company did not provide the Proponent with the 14-day notice and opportunity to cure under Rule

14a-8(f)(1). Rule 14a-8(f)(1) states in part, "[a] company need not provide [the proponent] such notice of a deficiency if the deficiency cannot be remedied, such as if [the proponent] fail[s] to submit a proposal by the company's properly determined deadline." The Company was not required to send a notice of deficiency to the Proponent under Rule 14a-8(f)(1) for the Proposal to be excluded under Rule 14a-8(e)(2).

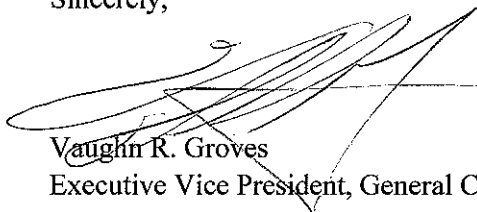
III. Conclusion

Based upon the foregoing analysis, Alpha respectfully requests that the Staff concur that it will take no action if Alpha omits the Proposal from its proxy solicitation materials for its 2012 annual meeting of stockholders. Alpha reserves the right to submit to the Staff additional bases upon which the Proposal may be omitted if the Staff disagrees with Alpha's conclusion that the Proposal can be omitted based on its untimely submission. If the Staff disagrees with the conclusions set forth in this letter, I would appreciate an opportunity to confer with you prior to the issuance of the Staff's response. We very much appreciate the Staff's attention to this matter.

Pursuant to Staff Legal Bulletin No. 14F (October 18, 2011), in order to facilitate transmission of the Staff's response to my request, my email address is [vgroves@alphanr.com](mailto:vgroves@alphanr.com), and the Proponent representative's facsimile number is (212) 681-4468.

If you have any questions or require any additional information, please do not hesitate to contact me at (276) 619-4463.

Sincerely,



Vaughn R. Groves  
Executive Vice President, General Counsel and Secretary

Attachments

cc: Patrick Doherty, State of New York, Office of the State Comptroller,  
Pension Investments & Cash Management

Exhibit A

THOMAS P. DiNAPOLI  
STATE COMPTROLLER



STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

PENSION INVESTMENTS  
& CASH MANAGEMENT  
633 Third Avenue-31<sup>st</sup> Floor  
New York, NY 10017  
Tel: (212) 681-4489  
Fax: (212) 681-4468



*T. P. DiNapoli*

December 8, 2011

Vaughn R. Groves  
Corporate Secretary  
Alpha Natural Resources, Inc.  
One Alpha Place  
P.O. Box 2345  
Abingdon, Virginia 24212

Received

DEC 12 2011

Executive Department

Dear Mr. Groves:

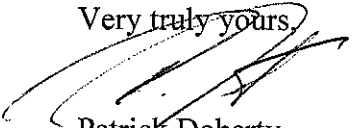
The Comptroller of the State of New York, The Honorable Thomas P. DiNapoli, is the sole Trustee of the New York State Common Retirement Fund (the "Fund") and the administrative head of the New York State and Local Employees' Retirement System and the New York State Police and Fire Retirement System. The Comptroller has authorized me to inform Alpha Natural Resources, Inc. of his intention to offer the enclosed shareholder proposal on behalf of the Fund for consideration of stockholders at the next annual meeting.

I submit the enclosed proposal to you in accordance with rule 14a-8 of the Securities Exchange Act of 1934 and ask that it be included in your proxy statement.

A letter from J.P. Morgan Chase, the Fund's custodial bank, verifying the Fund's ownership, continually for over a year, of Alpha Natural Resources, Inc. shares, will follow. The Fund intends to continue to hold at least \$2,000 worth of these securities through the date of the annual meeting.

We would be happy to discuss this initiative with you. Should the board decide to endorse its provisions as company policy, we will ask that the proposal be withdrawn from consideration at the annual meeting. Please feel free to contact me at (212) 681-4823 should you have any further questions on this matter.

Very truly yours,

  
Patrick Doherty  
pd;jm  
Enclosures

## SEXUAL ORIENTATION NON-DISCRIMINATION POLICY- 2012

**Whereas:** Alpha Natural Resources does not explicitly prohibit discrimination based on sexual orientation and gender identity in its written employment policy;

Over 89% of the Fortune 500 companies have adopted written nondiscrimination policies prohibiting harassment and discrimination on the basis of sexual orientation, as have more than 95% of Fortune 100 companies, according to the Human Rights Campaign. Nearly 70% of the Fortune 100 and 43% of the Fortune 500 now prohibit discrimination based on gender identity or expression;

We believe that corporations that prohibit discrimination on the basis of sexual orientation and gender identity have a competitive advantage in recruiting and retaining employees from the widest talent pool;

According to an October, 2009 survey by Harris Interactive and Witeck-Combs, 44% of gay and lesbian workers in the United States reported an experience with some form of job discrimination related to sexual orientation; an earlier survey found that almost one out of every 10 gay or lesbian adults also stated that they had been fired or dismissed unfairly from a previous job, or pressured to quit a job because of their sexual orientation;

Twenty-one states, the District of Columbia and more than 160 cities and counties, have laws prohibiting employment discrimination based on sexual orientation; 12 states and the District of Columbia have laws prohibiting employment discrimination based on sexual orientation and gender identity;

Minneapolis, San Francisco, Seattle and Los Angeles have adopted legislation restricting business with companies that do not guarantee equal treatment for gay and lesbian employees;

Our company has operations in, and makes sales to institutions in states and cities that prohibit discrimination on the basis of sexual orientation;

National public opinion polls consistently find more than three quarters of the American people support equal rights in the workplace for gay men, lesbians and bisexuals; for example, in a Gallup poll conducted in May 2009, 89% of respondents favored equal opportunity in employment for gays and lesbians;

**Resolved:** The Shareholders request that Alpha Natural Resources amend its written equal employment opportunity policy to explicitly prohibit discrimination based on sexual orientation and gender identity and to substantially implement the policy.

**Supporting Statement:** Employment discrimination on the basis of sexual orientation and gender identity diminishes employee morale and productivity. Because state and

local laws are inconsistent with respect to employment discrimination, our company would benefit from a consistent, corporate wide policy to enhance efforts to prevent discrimination, resolve complaints internally, and ensure a respectful and supportive atmosphere for all employees. Alpha Natural Resources will enhance its competitive edge by joining the growing ranks of companies guaranteeing equal opportunity for all employees.

**Exhibit B**

DEF 14A 1 ddef14a.htm DEFINITIVE PROXY STATEMENT

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549  
SCHEDULE 14A**

**Proxy Statement Pursuant to Section 14(a) of the  
Securities Exchange Act of 1934  
(Amendment No. )**

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Pursuant to §240.14a-12

**ALPHA NATURAL RESOURCES, INC.**

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
- Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

- Fee paid previously with preliminary materials.

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## STOCKHOLDER PROPOSALS FOR THE 2012 ANNUAL MEETING

**Inclusion of Proposals in Our Proxy Statement and Proxy Card under the SEC's Rules.** From time to time, stockholders may present proposals that are proper subjects for inclusion in the proxy statement and for consideration at an annual meeting. Pursuant to Rule 14a-8 of the Exchange Act, in order to be included in the Company's proxy statement for the 2012 annual meeting, such proposals must be received by Alpha no later than December 11, 2011, unless the date of our 2012 annual meeting is changed by more than 30 days from May 19, 2012, in which case the proposal must be received a reasonable time before we begin to print and mail our proxy materials.

**Bylaw Requirements for Stockholder Submissions of Nominations and Proposals.** Pursuant to Alpha's bylaws, stockholders of record may present proposals that are proper subjects for consideration at an annual meeting and/or nominate persons to serve on our board of directors at an annual meeting or special meeting at which directors are to be elected. Alpha's bylaws require all stockholders who intend to make proposals at an annual stockholders meeting or special meeting to provide a written notice, including the information specified in Alpha's bylaws (which information is summarized in "*Corporate Governance and Related Matters — Nominating and Corporate Governance Committee — Stockholder Director Nominations*"), to our Secretary at c/o Alpha Natural Resources, Inc., One Alpha Place, P.O. Box 2345, Abingdon, Virginia 24212, not later than the 90th day prior to the anniversary date of the date on which Alpha first mailed its proxy materials for the preceding year's annual meeting nor earlier than the 120th day prior to the anniversary date of the date on which Alpha first mailed its proxy materials for the preceding year's annual meeting. To be eligible for consideration at the 2012 annual meeting, notices must be received by Alpha between December 11, 2011 and January 10, 2012. In the event the date of the 2012 annual meeting is changed by more than 30 days from the anniversary of the date of the 2011 Annual Meeting, as set forth in this proxy statement, stockholder notice must be received not earlier the 120th day prior to the 2012 annual meeting nor later than the close of business on the date that is the later of the 90th day prior to the 2012 annual meeting or the 10th day following the day on which public announcement of the date of the 2012 annual meeting is first made. However, if the number of directors to be elected to the board of directors at an annual meeting is increased and there is no public announcement by Alpha naming all of the nominees for director or specifying the size of the increased board of directors at least 100 days prior to the anniversary of the mailing of proxy materials for the prior year's annual meeting of stockholders, then a stockholder's notice shall be considered timely, but only with respect to nominees for any new positions created by such increase, if it is received by our Secretary no later than the close of business on the 10th day following the date on which such public announcement is first made by Alpha. These provisions are intended to allow all stockholders to have an opportunity to consider business expected to be raised at the meeting.