FREEPORT-MCMORAN COPPER & GOLD

Phoenix Corporate Office
333 N. Central Ave.
Phoenix, AZ 85004

Douglas N. Currault II
Assistant General Counsel
and Corporate Secretary
(602) 366-8093 Tel
(602) 453-2871 Fax
E-Mail: Douglas_Currault@fmi.com

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Via Electronic Mail: rule-comments@sec.gov

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: Securities and Exchange Commission Proposed Rules on Mine Safety Disclosure issued on December 15, 2010
Release No. 33-9164; 34-63548; File No. S7-41-10

Dear Ms. Murphy:

Freeport-McMoRan Copper & Gold Inc. appreciates the opportunity to respond to the request for comments on the Securities and Exchange Commission's (the Commission) proposed rules on Mine Safety Disclosure. The safety of our company's workforce is our highest priority and we have programs designed to achieve a safe environment for all of workers. To the extent our mine safety issues are material to our investors, we believe that disclosure is currently required pursuant to one or more of the Commission's existing rules. Moreover, information regarding our compliance with U.S. mine safety laws is publicly available through the U.S. Labor Department's Mine Safety and Health Administration (MSHA) data retrieval system.

We acknowledge that the scope of the proposed rules is limited. However, we believe that certain of the disclosure requirements warrant clarification to ensure consistency in disclosure approaches taken by different issuers, which would provide more meaningful disclosure to investors. Accordingly, we respectfully submit these comments for the Commission's consideration.

Scope of the Proposed Rules

Section 1503 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act) mandates that specified disclosure be provided in each periodic report filed with the Commission by every issuer that is required to file reports with the Commission pursuant to sections 13(a) or 15(d) of the Exchange Act and that is "an operator, or that has a subsidiary that is an operator, of a coal or other mine." The disclosure requirements set forth in the Act are based on the safety and health requirements applicable to mines under the Federal Mine Safety

and Health Act of 1977 (the Mine Act), administered by MSHA. Section 1503(a)(1) of the Act requires that specified information be provided "for each coal or other mine of which the issuer or a subsidiary of the issuer is an operator." The Act defines "coal or other mine" to mean a coal or other mine as defined in section 3 of the Mine Act, that is subject to the provisions of the Mine Act.

We request that the Commission clarify in its final rules that issuers may group all integrated facilities of a mine site when complying with the disclosure requirements set forth in the Act, notwithstanding the fact that some of those facilities may have been issued separate mine identification numbers by MSHA. In administering the Mine Act, MSHA assigns mine identification numbers, and it may or may not assign separate identification numbers to facilities that are operationally integrated with a mine. For example, MSHA assigned a single mine identification number to our entire Morenci, Arizona operation, which is a very large open-pit copper mining complex that includes several open pits, a concentrator, four solution extraction (SX) plants and three electrowinning (EW) tank houses. However, for our Chino, New Mexico operation, which is a much smaller open-pit copper mining complex that includes a single open pit, a concentrator and a SX/EW plant, MSHA assigned three separate mine identification numbers to identify each of the mine, the concentrator and the SX/EW plant. Those decisions had nothing to do with safety reporting and we do not believe that MSHA's assignment of a mine identification number to a facility indicates that the facility is a separate mine under the Mine Act.

We believe that our proposed approach would eliminate investor confusion because the safety records of integrated facilities would be reported in a manner consistent with our reporting of operating and financial data. Please refer to Items 1 and 2 (Business and Properties) of our 2009 Form 10-K where we have described our mining operations. Moreover, we believe that this approach is consistent with the Act because the specified disclosures would be provided on a mine by mine basis.

Location of Disclosure and Time Periods Covered

The Act states that each periodic report must include disclosure "for the time period covered by such report." The proposed rules require that each quarterly report on Form 10-Q include the required disclosures for any orders, violations or citations received, penalties assessed and pending legal actions initiated during the quarterly period covered by the report. The proposed rules also require that each annual report on Form 10-K include disclosure covering both the fourth quarter of the issuer's fiscal year, and cumulative information for the fiscal year.

We recommend that the final rules provide that each annual report on Form 10-K (or Form 20-F for foreign filers) include the required disclosure only on a cumulative basis for the fiscal year. This would be consistent with the Act because the time period covered by the annual report on Form 10-K is the entire fiscal year. Requiring issuers to also disclose fourth quarter information would not provide investors with any additional significant information. In addition, we agree with the Commission's proposal to require issuers that have matters to report in

accordance with the Act to include brief disclosure in the body of the annual report, with the required disclosures being presented in an exhibit.

With respect to quarterly reports, we believe the Commission has the authority to allow issuers to satisfy a disclosure obligation by incorporating information by reference to another agency's public information relating to the issuer. Accordingly, we recommend that the Commission allow issuers to incorporate the required information by reference to the data retrieval system on MSHA's website and provide specific instructions on how to access the information. This would be a more efficient approach to complying with the Act, because the information required by the Act is already publicly available on MSHA's website. Moreover, as noted by the Commission in the proposed rules, to the extent mine safety issues are material, disclosure would likely be required pursuant to one or more of the Commission's existing rules, such as Regulation S-K Item 303 (Management's Discussion and Analysis of Financial Condition and Results of Operations), Item 503(c) (Risk Factors), Item 101 (Description of Business) or Item 103 (Legal Proceedings) and Rule 12b-20. Accordingly, we believe that requiring mine safety disclosures only in an issuer's annual report on Form 10-K, with quarterly disclosures being incorporated by reference to MSHA's data retrieval system, would eliminate repetitive disclosure of significant volumes of information and would be consistent with the Act's purpose of making safety data readily available to investors.

Dismissed Orders, Violations and Citations

The proposed rules would require issuers to report all orders, violations or citations received during the period covered by the report, regardless of whether such order, violation or citation was subsequently dismissed or reduced below a reportable level prior to the filing of the periodic report. The Federal Mine Safety and Health Review Commission (FMSHRC) is an independent adjudicative agency that was established by the Mine Act to provide administrative trial and appellate review of disputes arising under the Mine Act. Through this process, orders, violations and citations are sometimes dismissed, or the amount of the related assessment may be reduced. There is no reason to believe that FMSHRC's adjudications are ineffective, and therefore, no reason to assume that reduced or dismissed citations are any more material than as determined by FMSHRC.

Because dismissed orders, violations and citations are removed from MSHA's data retrieval system, the inclusion of these orders, violations or citations in an issuer's mine safety disclosures would result in data that differs from and exaggerates the significance of the data that is available on MSHA's website. Accordingly, we request that the final rules allow issuers to exclude disclosure of orders, citations and violations that have been subsequently dismissed or reduced below a reportable level prior to filing the periodic report. This approach would be consistent with the purposes of the Act, which is to provide accurate disclosure of violations that continue to be asserted or have been adjudicated, rather than to require disclosure of matters that FMSHRC has concluded are not factually or legally supportable.

Required Disclosure Items

f. The total dollar value of proposed assessments from MSHA under the Mine Act.

Each issuance of a citation, violation or order by MSHA generally results in the assessment of a civil penalty against the mine operator. The proposed rules require issuers to disclose the total dollar amount of assessments proposed by MSHA during the period covered by the report, as well as the cumulative total of all proposed assessments outstanding as of the last day of the period covered by the report. We do not believe it was the intent of the Act or of the Commission to require disclosure of dollar values of proposed assessments that do not correlate to the orders, citations and violations received during the period covered by the report as such disclosure would be misleading to investors. Accordingly, we request that the final rules clarify that the disclosure of the total dollar amount of proposed assessments relates to the orders, citations and violations received under the Mine Act during the period covered by the report, which is also consistent with the presentation of proposed assessments in MSHA's data retrieval system.

In addition, we request that the final rules exclude from the disclosure requirements the cumulative total of all proposed assessments outstanding as of the last day of the period covered by the report. This proposed requirement goes beyond the Act, which does not require this disclosure at all. Moreover, we believe that including this information would be confusing to investors because the cumulative total of all proposed assessments outstanding as of the last day of the period covered by the report does not necessarily relate to the orders, citations or violations issued by MSHA during the period or to pending legal actions before the FMSHRC. If the final rules include this disclosure requirement, we request that such disclosure only be required in the annual report on Form 10-K (or Form 20-F for foreign filers).

j. Any pending legal action before the Federal Mine Safety and Health Review Commission involving such coal or other mine.

The Act requires mining companies to disclose in each periodic report "any pending legal action" before the FMSHRC. The proposed rules require disclosure in each periodic report of any pending legal actions that were initiated during the period covered by the report and also require issuers to update the information about pending legal actions in subsequent periodic reports "if there are *developments material to the legal action* that occur during the time period covered by such report." The proposed rules would also require specified information about the legal action, such as the date instituted, by whom, the name and location of the mine involved, and a brief description of the category of violation, order or citation underlying the proceeding.

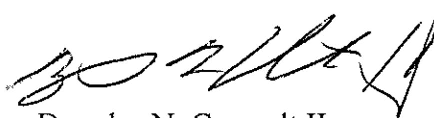
In interpreting the Act, we believe it would be appropriate for the Commission to allow issuers to disclose, with respect to immaterial legal actions, only the number of matters pending before the FMSHRC, along with the number instituted and resolved in that quarterly or annual period, with a general description of the types of matters. We do not believe that requiring issuers to disclose detailed information regarding individually immaterial proceedings would be meaningful to investors. Further, it serves no purpose to require issuers to report developments

that are material to an immaterial proceeding. As of September 30, 2010, we had 188 pending legal actions before the FMSHRC, all of which were financially immaterial to a company of our size. We do not believe that detailed disclosure about these proceedings would be useful to investors. Current rules require disclosure of material legal proceedings which would include a series of proceedings that, in the aggregate, would be material.

The proposed rules require disclosure of the date the pending legal action was instituted. If the Commission adopts final rules substantially in the form of the proposed rules, we request that the final rules clarify that the date the pending legal action was instituted means the date such action was assigned a docket number by MSHA as opposed to the date the assessment was initially contested by the issuer. In our view, contested assessments do not become legal actions until such matters are assigned a docket number by MSHA. Issuers generally experience time lags between the issuer's contesting of an assessment and MSHA's assignment of a docket number to the matter being contested. In addition, the date that an issuer contests an assessment is not recognized or tracked in MSHA's data retrieval system; however, the docket number assigned to pending proceedings is recognized by MSHA's data retrieval system and is publicly available on MSHA's website. We believe that it would be overly burdensome for issuers to track the exact date that they contest each and every assessment, and that the date MSHA assigns a docket number is an appropriate measure of the date the legal action was instituted.

We appreciate the Commission's consideration of our views and would be pleased to discuss these matters further should you have any questions.

Respectfully submitted,



Douglas N. Currault II