

02 March 2011

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission (SEC)
100 F Street, NE
Washington, DC 20549-1090

RE: Comments Regarding File Number S7-41-10 on Mine Safety

Dear Ms. Murphy:

We are writing on behalf of EARTHWORKS to provide comments on the Mine Safety rules of the Dodd-Frank Act.

EARTHWORKS has a 23-year history of working to protect communities, workers, and the environment from the impacts of irresponsible mineral extraction around the world. Through our No Dirty Gold campaign, we work with over 70 jewelry companies and refiners who are seeking to establish responsible supply chains for their precious metals. Those companies have committed to ensuring that labor standards, including health and safety standards, are respected by mining operations. They are seeking to avoid gold and other metals that come at the cost of the health and safety of mine workers.

These Rules implementing Section 1503 of the Dodd-Frank Wall Street Reform and Consumer Protection Act have the potential to help increase disclosure and transparency on reporting of mine health and safety problems and, thus, provide incentive for companies to reduce health and safety risks. Having that information readily available to investors, client companies, and other concerned parties will assist them in accurately assessing risks and assist efforts to help reduce those risks.

The rules also have the potential to provide information on health and safety risks at mines that is missing from current reporting. Currently, regulations do not require that issuing companies report health and safety incidents at mines in other countries. This is a huge gap in current reporting requirements. These rules must correct that reporting deficiency.

We have provided detailed comments below on a number of the questions on which you requested comments.

Scope (questions 1-6)

The definition of subsidiary and entity under the control of the corporation must be comprehensive. This should include unconsolidated equity investees and joint ventures.

Entities with American Depository Receipts (ADRs) that file an annual report with the SEC using the form Annual Report to Security Holders (ARs) or any other annual report pursuant to Section 12g3-2(b) of the Exchange Act should also be required to file.

These rules should apply to all mines globally in which issuers have interest. The Mine Act covers mines the products of which enter commerce or affect commerce, and commerce is trade including trade "between a place in a State and any place outside thereof." Therefore, it seems that these rules should at least include mines in other countries if those products enter a State in the U.S. Companies that have mines in other countries should report on incidents that occur at those mines as well since those may affect the operator's financial position and, thus, affect commerce for those products.

Irrespective of interpretations of the Mine Act, the reporting requirements should apply to mines outside of the United States for several additional reasons. Operations outside the US in many cases represent a large proportion of issuing companies' investments.¹ Also, operations in some other countries may present greater health and safety risks because of differences in regulation, company policy and procedures, or operating conditions. Available data indicate that the mine fatality rate is higher in countries such as Peru and Kyrgyzstan than it is in the U.S., and that non-fatal injury rate is also higher in countries such as Mexico and Argentina than in the U.S.² In South Africa, more than 200 people died in mine accidents in 2007, and more than 2,600 miners died in accidents in China in 2009.³ Operations in such areas could present special risks and investors should be informed of problems and risks. Investors and others must be properly informed of issuers' health and safety problems and risks whether occurring in the US or abroad.

Companies can report on health and safety problems at mines outside the United States in ways that are comparable to the reporting they can do for mines in the United States. This will involve violations of other countries' laws on mine health and safety, and reporting on mining-related fatalities.

¹ Of the largest (by market capitalization) mining companies that file annual reports or exchange American Depository Receipts, most have their mining operations primarily outside of the United States, including AngloGold Ashanti Ltd., Barrick Gold Corp., BHP Billiton Ltd./plc, Cameco Corp., China Shenhua Energy Company Ltd., Compania de Minas Buenaventura SA, Eldorado Gold Corp., Eramet SA, Eurasian Natural Resources Corp. PLC, Fortescue Metals Group Ltd., Gold Fields Ltd., Goldcorp Inc., Impala Platinum Holdings Ltd., Ivanhoe Mines Ltd., Kazakhmys Plc., Kinross Gold Corp., MMC Norilsk, Newmont Mining Corp., Potash Corp. of Saskatchewan Inc., Randgold Resources, Rio Tinto plc/Ltd., Teck Resources, Vale, Xstrata, Yamana Gold, Zijin Mining Group Co. Ltd.

² Rates as fatalities and non-fatal injuries per number of employed miners for years between 2006 and 2008. International Labour Organization. LABORSTA. <http://laborsta.ilo.org/>

³ "Mine fatalities down but union's concerns remain." Business Day (South Africa) 18 December 2008. <http://www.businessday.co.za/Articles/Content.aspx?id=31252>

"Flood at China coal pit traps 28." BBC News 21 November 2010. <http://www.bbc.co.uk/news/world-asia-pacific-11805400>

Disclosure should be for each individual mine. This is necessary in order for investors and others to properly assess trends in safety risks in a company's operations.

Smaller companies, wholly-owned subsidiaries, and asset-backed issuers should not be exempt from these requirements. Health and safety problems are a concern for those operations as well, and can be even greater concerns for smaller companies where they have smaller budgets and large mine construction or operation expenditures. Investors must be properly informed of those risks.

Location of disclosure (questions 7-11)

Disclosures should be "filed," not "furnished," in periodic reports, and included in registration statements as well.

Time periods covered (questions 12-13)

Disclosures for the annual report should include the data for the year and for the fourth quarter, and should, as proposed, not allow exclusion of violations that were subsequently dismissed or reduced. This is partly because the existing backlog of Federal Mine Safety and Health Review Commission cases would lead to an excessive delay in reporting if companies did not report incidents immediately.

Required disclosure items (questions 14-22)

The rules should require companies to disclose the total and cumulative total dollar amounts of assessment of penalties, including contested assessments, and should include an explanation of violations, orders, and citations as proposed.

All issuers must report mining-related fatalities for all mines (whether located in the U.S. or in foreign countries). The rules should require reporting of fatalities that are currently considered "non-chargeable" at U.S. mines. Fatalities involving "trespassers" in particular should be reported. This is necessary because community members seeking access to their lands are sometimes the victims of fatal accidents at a number of mines in foreign countries where mine safety precautions may differ from those in the U.S.⁴

⁴ For example, two residents apparently drowned at a dam for Newmont Mining's Ahafo mine in October 2005. They were crossing the dam instead of going several miles around (see "Newmont's dam takes a heavy toll on communities in BA," Public Agenda 24 October, 2005; and "Tragedy strikes at Newmont," Ghanaian Chronicle 20 October, 2005). The company did not report on this in its annual report.

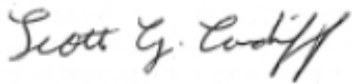
The rules should require legal action disclosure and updates in periodic reporting as proposed.

Thank you for the opportunity to comment on these important provisions.

Sincerely,

A handwritten signature in black ink, appearing to read "Payal Sampat". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Payal Sampat
International Program Director
EARTHWORKS' No Dirty Gold campaign

A handwritten signature in black ink, appearing to read "Scott G. Cardiff". The signature is cursive and somewhat stylized.

Scott Cardiff
International Program Coordinator
EARTHWORKS' No Dirty Gold campaign