American Federation of Labor and Congress of Industrial Organizations

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Sent via email and US Mail

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

Re: Implementation of Mine Safety Disclosure Pursuant to Section 1503 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (File Number S7-41-100)

Dear Ms. Murphy:

On behalf of the American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO"), I welcome this opportunity to offer comments to the Securities and Exchange Commission ("SEC") on the proposed rules implementing the mine safety disclosure requirements of Section 1503 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (File Number S7-41-100).

The AFL-CIO is the country's largest labor federation and represents 12.2 million union members. Union-sponsored pension and employee benefit plans hold more than $480 billion in assets. Union members also participate directly in the capital markets as individual investors and as participants in public-sponsored and corporate-sponsored plans.

Section 1503 of the Dodd-Frank Act is the result of one of the last efforts of the late Senator Robert Byrd (D-WV), together with Senator Jay Rockefeller (D-WV), to protect mine workers and investors in public companies with mining operations. Senators Byrd and Rockefeller acted in the aftermath of the nation's

worst mine explosion in more than ten years. When Massey Energy's Upper Big Branch Mine exploded on April 5, 2010, killing 29 miners, investors and company employees had little or no information about Massey Energy's long history of violations of federal and state mine safety laws.[1]

On February 28, 2011, the Department of Justice filed criminal charges against Massey Energy's chief of security at the Upper Big Branch Mine.[2] The indictment charged that Massey Energy's chief of security had lied to an FBI special agent and an agent of the federal Mine Safety and Health Administration and ordered the destruction of thousands of pages of safety records. While the presumption of innocence is central to our criminal justice system, Massey Energy's investors and its employees have suffered great harm. In addition to the dead and injured (and their family members), Massey Energy's investors saw a significant decline in the share price from $53 per share before the April 5, 2010 explosion to $27 per share on July 1, 2010. Massey Energy's share price only began to climb when the Board of Directors announced, some six months after the Upper Big Branch Mine explosion, that they would consider a sale to another company. [3]

Following are the AFL-CIO's answers to certain questions posed in the proposed rule:

Question 3: Smaller companies should not be exempted from any portion of the disclosure requirements. All investors have an equal interest in knowing about the financial security of their investments regardless of the size or value of any particular one. Moreover, to the extent the required disclosures add impetus for operators to improve their mine health and safety practices---as is clear from an enclosed memorandum by the office of the late Senator Byrd--- the need is the same regardless of the size of the coal mine or the entity that owns or operates it.

Question 5: It will not be too burdensome for operators to disclose information on a mine-by-mine basis. Mine operators currently report information to the Mine Safety and Health Administration ("MSHA") on a mine-by-mine basis, so operators will be able to file such reports with the SEC the same way. Having disclosures made on a "project" or "geographic region" basis would not make

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[1] Massey Energy's Upper Big Branch Mine was not even listed in a search of federal mine safety violations by Massey Energy on the Mine Safety and Health Administration's (MSHA) searchable website, http://www.msha.gov/drs/drshome.htm. MSHA data for the Upper Big Branch Mine are listed instead under a Massey Energy subsidiary, Performance Coal.

[2] "Upper Big Branch Security Chief Charged with Obstruction of Justice and False Statements," Federal Bureau of Investigation (Pittsburgh), February 28, 2011, http://pittsburgh.fbi.gov/dojpressrel/pressrel11/pt022811.htm

[3] "Massey News Attracts Investors," Pittsburgh Post- Gazette, October 24, 2010. http://www.post-gazette.com/pg/10297/1097394-435.stm?cmpid=news.xml

much sense. Moreover, as described above in the Massey Energy example, the Mine Safety and Health Administration's database is not fully compatible with complete reporting by every mine of a public company.

Question 6: We believe it is absolutely critical that annual reports on Form 10-K and quarterly reports on Form 10-Q contain complete information on wholly owned subsidiaries.

Question 9: We agree with the proposal to require a summary of the mine health and safety issues in the body of reports, supplemented by exhibits that include the required detail. However, certain extraordinary information, such as all fatal accidents and if the mine has been placed on a "pattern of violation," should be included in the body of reports.

Question 11: eXtensible Business Reporting Language (XBRL) is now the standard format for SEC reporting by public companies. Investors rely upon XBRL. MSHA's report format, of course, is not in XBRL. Consequently, MSHA format does not give investors data in the format they need and expect from public companies. Since all other SEC-required data must be provided in an interactive data format, proper analysis of mine safety data by investors requires a compatible format to analyze company safety data. While issuers may claim they could reduce reporting costs by using the same data format that is already available through MSHA's data retrieval system, the clear intent of Congress in Section 1503 is to provide investors who rely upon SEC filings with critical data on safety in a format they can use to make informed judgments.

Question 12: We are in strong agreement with the proposal to require disclosure of orders, citations, violations, assessments, and legal actions received or initiated during the fourth quarter as well as in the aggregate for the year. To understand any material changes in a mine's health and safety record, it is important for investors to learn of any trends, and requiring the information for both the fourth quarter and the whole year will help reveal any such trends, especially after the first reporting year.

Question 13: We agree with requiring information to be reported when it happens. It is not uncommon for contested citations to take years to resolve so waiting for resolution before it would be reportable would both diminish the usefulness of the information, and also encourage operators to file contests to postpone their reporting obligations.

At this time, the Federal Mine Safety and Health Review Commission ("FMSHRC") has over 18,000 cases pending, with a backlog in case processing of many years. The overwhelming majority of its backlog developed since the MINER Act was enacted in 2006, and it will likely continue so long as the current federal budget challenges persist. Thus, while an operator would be permitted to include information when, for example, it successfully contested a matter and

obtained a reduced penalty or vacation of a citation or order, information about orders, violations and citations should be reported when they are issued. After all, investors can be affected by events that happen *when* they occur, not just years later when litigation may be resolved. Also, the perception of a problem can impact a company's valuation as much as the problem itself, so investors should be informed when the citations and orders are first issued, without delaying until they are finally resolved. Finally, it is contrary to public policy to add any inducements for operators to contest MSHA enforcement actions; allowing operators to desist in their SEC reporting any contested matters until they would be deemed final would serve as just such an improper inducement.

Question 14: We agree with limiting disclosure to Significant and Substantial ("S&S") violations, and excluding non S&S violations. This will focus attention on the most significant violations that pose a material risk to investors. We also support the requirement that the total number of 104(b) orders requiring an immediate withdrawal, citations and orders for unwarrantable failures, flagrant violations and imminent danger orders be reported, along with the total dollar of MSHA's proposed assessments for the time period covered by the particular report.

Question 15: Disclosure of the total dollar amounts of assessments of penalties proposed by MSHA during the time period covered by the report, together with the cumulative total of all proposed assessments of penalties outstanding as of the date of the report is necessary. Many challenged citations take years to resolve, but still represent a financial liability while they remain in dispute, it is important for an investor to see the cumulative exposure. It no doubt would have warned investors in Massey Energy. In addition, investors would be able to see trends, which can affect a company's value.

Question 16: Issuers should not be permitted to exclude proposed assessments that are being contested, nor should they be permitted to separate out the contested amounts. That said, issuers may indicate that certain amounts are being contested, but all citations and amounts should be reported in the same place and in the same way to enable the investors to better understand a company's mine health and safety record and its financial exposure. Otherwise, issuers will be encouraged to contest citations, as was the practice at Massey Energy. Moreover, most contested citations are upheld in whole or in part when they proceed through the administrative adjudicative procedure, so it will be more meaningful to investors if all assessment information is included, even if some matters are being contested.

We agree that all mining-related fatalities of mines subject to the Mine Act should be reported, and that the MSHA standard for chargeability should apply for SEC purposes, as well. All fatal accidents should be reported when they occur, though a subsequent non-chargeable decision by MSHA may later be reported, as well. We also support the reporting of fatalities at mines not subject

to the Mine Act that are controlled by issuers that have the duty to file these SEC reports; for any such mines the MSHA criteria should apply when determining if a fatality is mining-related.

We also agree that there should be a summary, as proposed, disclosing pending legal actions before the Federal Mine Safety and Health Review Commission. Information about pending legal actions should be disclosed when it is initiated, with updates so long as the litigation is pending. It is unnecessary to require reports about vacated assessments. The contextual information about pending litigation, and categories of violations, orders and citations, as proposed, is appropriate for inclusion; we do not suggest requiring the addition of any other information.

Question 23: The fact that events that would trigger filing under proposed Item 1.04 are also events that are required to be disclosed in periodic reports under Section 1503(a) of the Act and proposed Item 106 of Regulation S-K does not necessitate elimination of previously reported information.

Conclusion

In summary, given the tragedy of the explosion at Massey Energy, the final rule should be shaped by the principle that issuers should report enough substantive information, and in a manner, so investors may learn about the health and safety records of coal mines operated by public companies. The data presented should enable investors to see any trends of improving or deteriorating conditions, and enhanced or reduced enforcement activity. This information must be reported in an accessible manner so that investors can best understand and appreciate the impact that health and safety compliance can have on the value of their investment.

Sincerely,

Daniel F. Pedrotty
Director, Office of Investment

Amendment on Disclosure of Worker Safety and Health Conditions

To require the disclosure of safety and health conditions at risky workplaces (coal mines, refineries, oil rigs), and to empower the SEC and shareholders to compel disclosure and to seek civil penalties for those who fail to disclose this safety and health information.

Overview

Occupational safety and health conditions can pose grave threats to workers and their companies. Publicly traded corporations are required to disclose, discuss, and analyze material information and risk. However, occupational safety and health risks are often poorly understood –by investors, but also by upper management— and consequently corporations have long taken inconsistent approaches to disclosing this information.

The public deserves consistent information, in order to make reasonable and responsible decisions. Failure to disclose safety and health conditions can carry grave consequences for workers, families, and communities -- and can also have meaningful consequences for investors, industries, and markets. The reputations of companies and entire industries can be marred by major accidents or workplace deaths. Costly litigation can arise from health and safety violations or wrongful deaths. Capital and equipment can become stranded due to physical damage or the closure of operations. Inadequate disclosure of safety and health information can also mask declining productivity.

Summary of Amendment

This amendment requires corporations to disclose information about significant occupational health and safety conditions at risky workplaces -- such as coal mines, refineries, oil rigs. The Securities and Exchange Commission and shareholders would be authorized to seek equitable relief (such as the immediate disclosure of health and safety conditions), as well as civil penalties in certain cases. The scope of the relief and the penalties would be set by a court, in light of the facts and the circumstances of each case, and in proportion to other penalties that may be imposed under health and safety laws.

The corporation would be liable for providing equitable relief and any damages that may have been incurred by a shareholder. In cases where senior executive officers or members of the board of directors knowingly oversaw the failure to disclose the health and safety information, the courts could impose civil penalties. The directors and officers would not be liable for paying the penalties in cases in which malfeasance by another director, officer, worker, or agent of the corporation led to the failure to make the necessary disclosure.

The amendment requires corporations to disclose four categories of health and safety information: pending litigation regarding health and safety; significant health or safety conditions at risky workplaces, which may cause the corporation to incur damages arising from wrongful deaths; significant health or safety conditions that may impact financial conditions or operating results within the corporation; trends in health and safety violations that may affect the relationship between costs and revenues of a corporation.