

October 13, 2015

By E-Mail:

Chair Mary Jo White
Commissioner Luis Aguilar
Commissioner Michael Piwowar
Commissioner Kara Stein

U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Rulemaking for Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act

Dear Chair and Commissioners:

As civil society organizations working to promote transparency and accountability in the United States' extractives sector, we write in support of an implementing rule for Section 1504 of the Dodd-Frank Act that requires each company to publicly disclose its payments made to governments, for each of its projects.

While civil society organizations (CSOs) like ours have long worked to monitor extractives activity in the United States, we are often stymied by data that is too aggregated to be useful, difficult to access, or altogether unavailable. A strong rule for Section 1504, mirroring what was released in August 2012, would help remedy these problems, and provide precisely what we need to track financial flows in the extractives sector and ensure that Americans are getting a fair return for their natural resources.

The United States is a resource-rich country, ranking as the world's top producer of petroleum and natural gas in 2014,¹ and containing significant deposits of coal, copper, gold, and iron ore. Hundreds of companies subject to Section 1504 have operations in the United States, including Anadarko Petroleum, BHP Billiton, BP, Chevron, ConocoPhillips, ExxonMobil, Freeport-McMoRan, and Royal Dutch Shell.

Revenue from resource extraction in the United States is critical to both national and local-level budgets. Extractives revenue represents one of the federal government's largest sources of non-tax income, with inputs of over \$13 billion in 2014. State and local governments rely on this federal resource revenue to fund school districts, maintain roads, and support public transit systems. For instance, Louisiana distributes half of its federal resource revenue to local school districts and the other half to local governing bodies. In New Mexico, over 80 percent of federal resource revenue goes to public schools.² Resource revenue is also used to help mitigate the adverse environmental impacts of extraction on nearby communities. Pennsylvania, for example, imposes an impact fee on the development of unconventional natural gas resources, which is

¹ <http://www.eia.gov/todayinenergy/detail.cfm?id=20692>

² http://www.energy.senate.gov/public/index.cfm/files/serve?File_id=d8c5d5f4-efce-4c0c-ae87-6b3eecd6316f

distributed to state, county, and municipal offices.³ Forty percent of federal onshore resource revenue goes to the Reclamation Fund which benefits 17 western states.⁴ Particularly in an era of fiscal tightening, responsible stewardship of the country's natural resource wealth is essential.

Unfortunately, some companies still knowingly submit inaccurate royalty payment information to the federal government or fail to report accurate production data. In 2014 alone, this resulted in the Department of the Interior (the agency responsible for collecting payments from oil, gas, and mining companies) taking civil action against 13 companies.⁵ And there is reason to believe that many violations have gone, and continue to go, unexposed. Indeed, a recent Government Accountability Office (GAO) report declared the Department of the Interior's management of oil and gas revenue at "high risk" for "waste, fraud, abuse, and mismanagement."⁶ The report went on to say that Interior is not sufficiently confident that it is collecting all the revenue it is due.

Civil society organizations like ours play a significant role in overseeing the U.S. extractives sector, yet a big problem we consistently face is a lack of readily-available, high-quality data. Currently, data on federal government websites is much too aggregated to be useful for the purposes of citizens and local planners. These websites reveal 1) how much money each company paid the federal government for extraction on federal land in all states *combined* (i.e. how much Company A paid the federal government for extraction on federal land in all 50 states combined), and 2) the sum *all companies combined* paid the federal government for extraction on federal land, broken down by state (i.e. the combined sum that all companies extracting on federal land located in California paid to the federal government).

There is tremendous demand for more localized data, and colleagues have been resourceful in gathering what information they can about extractive projects in their communities. Information has been gathered by submitting Freedom of Information Act requests, piecing together information included in documents published by an array of government agencies, monitoring the Federal Register, and visiting government offices to view datasets that are not available online. Despite the limitations in quality and availability of data, a lot of good work has been done.

For example, in 2014, First Peoples Worldwide used data on specific projects pieced together from company annual reports and other SEC filings to assess the exposure of 52 extractive companies to social risk at their operations on or near the territories of Indigenous Peoples. The assessment was produced in response to demand from investors for better tools to predict and prevent the costs of conflicts between companies and communities. It was applied to companies' projects – rather than to companies as a whole – in order to provide the type of granular analysis most useful to investors. Access to readily-available and comprehensive project-level payment disclosures would further strengthen the assessment's utility as a risk management tool, by enabling investors to determine the impacts of project-level social risk to the overall financial performance of companies.

³ http://www.puc.state.pa.us/filing_resources/issues_laws_regulations/act_13_impact_fee.aspx

⁴ <http://www.gao.gov/assets/660/650122.pdf>, p. 42.

⁵ <http://www.onrr.gov/compliance/PDFDocs/2014.pdf>

⁶ http://www.gao.gov/highrisk/management_federal_oil_gas/why_did_study#t=1

In addition, even with the limited information currently available, organizations like ours have been able to help government agencies check to ensure that citizens are receiving proper compensation for this country's resources. For instance, in a 2011 letter to Secretary Ken Salazar of the Department of the Interior (DOI)⁷, the Project on Government Oversight (POGO) described how it used information acquired through the Freedom of Information Act to uncover a possible conflict of interest between the Bureau of Land Management's Casper, Wyoming office, and a company the office was tasked with overseeing. Specifically, POGO pieced together information obtained in two DOI Inspector General reports to reveal that the Casper field office manager had accepted but failed to disclose gifts from Neil McMurry of McMurry Ready Mix Company, while considering a land exchange that would have sent 2,072 acres of Bureau of Land Management (BLM) land to McMurry for 30 acres of the company's land. Additionally, POGO found that the Casper office had adopted a lax attitude toward allegations of trespassing and improper removal of materials levied against McMurry Ready Mix Company. While the Department of the Interior's Office of the Solicitor ultimately claimed it could find no evidence that material had been removed, a BLM geologist and a GPS reading estimated that \$388,158 in fees were owed to the government for sand and gravel that had been removed.

Soon, civil society organizations like ours will have access to more data than ever before, when the United States publishes its first Extractive Industries Transparency Initiative (EITI) report this December. While a step in the right direction, data set to be released in the first USEITI report stops well short of what CSOs and communities need to hold companies and governments – federal, state, and local – accountable. This is in no small part because Section 1504 of the Dodd-Frank Act has not yet been implemented. The EITI Standard's Section 5.2e (which all EITI-compliant countries must adhere to) states: "Reporting at project level is required, provided that it is consistent with the United States Securities and Exchange Commission rules and the forthcoming European Union requirements."⁸ The USEITI multi-stakeholder group was unable to reach a consensus on a project-level reporting definition consistent with Section 5.2e for its first report to be issued in December 2015. The USEITI working group responsible for project-level reporting expressed the hope that the SEC would issue new rules for Section 1504 so that they might be reflected in the next USEITI report. To this end, according to USEITI meeting notes, the working group "urge(d) the Multi Stakeholder Group (MSG) to write to the Chair and Commissioners of the SEC expressing the MSG's significant interest in the prompt release of new implementing rules for Section 1504 of the Dodd Frank Act that support a global standard for extractives payment reporting."⁹ These recommendations were supported by the USEITI MSG.¹⁰ The EU Directives already define project by contract, license, or lease. An uncontested EITI Standard as to what constitutes "reporting at project level" depends on the Securities and Exchange Commission doing the same.

It is also important to note that the legal text of Section 1504 explicitly requires that the implementing rule "support the commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas, or

⁷ <http://www.pogo.org/our-work/letters/2011/nr-doi-20110302.html>

⁸ <https://eiti.org/document/standard>

⁹ <http://www.doi.gov/eiti/FACA/upload/USEITI-Company-and-Project-Level-Recommendation.pdf>

¹⁰ <http://www.doi.gov/eiti/FACA/upload/USEITI-December-2014-Actions-v4-141211.pdf>

minerals.”¹¹ EITI is certainly the most significant of these efforts, and the Securities and Exchange Commission is simply not supporting EITI unless it promptly issues a rule that aligns its project definition with the definition under the EU law.

Having addressed the resource endowment of the United States, its importance to federal and state budgets, the poor management record of those agencies tasked with collecting payments from extractives companies, and the inadequacy of existing and soon-to-be-released payment and revenue data, we want to conclude this letter by detailing precisely why project level data is so critical in the United States, and why a rule for Section 1504 of Dodd-Frank that mandates disclosure by project is imperative.

First, project level payment data reported to the Securities and Exchange Commission would help the Department of the Interior verify that it has collected the correct amount of money from extractives companies. Indeed, in a 2011 submission to the SEC, Interior asked that a rule for Section 1504 require reporting at the lease level, writing: “it may provide a valuable cross-check for the data we receive from resource companies, and help ensure that the Federal Government and American taxpayers are receiving the proper returns for extraction of these valuable public resources.”¹² City governments similarly stand to benefit. Virginia, for example, authorizes its cities to impose severance (production) taxes on oil, gas, and mineral extraction on both state and federal land.

Second, project-level payment information would enable civil society organizations to ensure that revenue-sharing agreements put into place by states are being properly implemented. A significant percentage of extraction in the United States takes place on federal land. The federal government receives royalties from this extraction, keeping some, and allocating the rest to the state in which extraction occurred. States, in their own right, often levy a “severance” tax on the same production on federal lands. Many states have revenue-sharing agreements in place that entitle extractive-producing sub-state jurisdictions – counties, cities, and even school districts – to a share of the revenue generated from extraction projects on their land. This includes revenue generated by the severance tax, as well as a state’s share of federal royalties on production from federal leases in the state. In sum, some state governments (including those of resource-rich states like Alabama, Colorado, Montana, North Dakota, Oklahoma, and Utah) are obligated to return a share of money generated on federal land to extractives-producing sub-state jurisdictions. Where such agreements are in place, access to project level payment data is essential if local jurisdictions hope to ensure that they are receiving the share they are due. Citizens must have granular payment information in order to verify that the correct amount of revenue from each project in their sub-state jurisdiction has been accounted for, and to confirm they are receiving the correct allocation from the state. With USEITI unable to reach consensus on a project-level definition until the SEC releases a rule for Section 1504, the Commission would significantly strengthen USEITI reports and provide CSOs with the information we need by issuing a rule that mandates project-level reporting by contract, license, or lease.

¹¹ 15 U.S.C. § 78m(q)(2)(E)

¹² <http://www.sec.gov/comments/s7-42-10/s74210-108.pdf>

Finally, project-level payment information is essential if Americans living near extraction sites hope to meaningfully weigh the costs and benefits of extraction. Costs can cover the spectrum, from fiscal, to environmental, to social.

In terms of fiscal costs, while revenue generated by resource extraction will sometimes be significant enough to off-set associated expenses, a less than robust return can put local governments in a fiscal bind. Economic costs of extraction can run high, as the Texas Department of Transportation found in its analysis of the impact of extraction on transportation infrastructure. Assessing the road-maintenance costs associated with building and maintaining just one gas well, the Texas Department of Transportation calculated that the volume of truck traffic required to bring a single gas well online is equivalent to the impact of roughly eight million cars, with the volume of truck traffic required to maintain the well equivalent to another two million cars. The same study determined that constructing a gas well reduces highway service life by 53 percent.¹³

Environmentally, the costs of extraction can be devastating. In 2000, the Environmental Protection Agency estimated that 40 percent of the headwaters of watersheds in the western portion of the country had been polluted by hardrock mining.¹⁴ Indeed, as recently as August 2015, an accident at a Colorado mine resulted in 3 million gallons of toxic water spilling into a tributary of the Colorado River.¹⁵ Remarking on the river and the consequences of the disaster, Colorado State Senator Ellen Roberts said: “It is not just a scenic destination. It is where people literally raise their children. It is where the farmers and ranchers feed their livestock, which in turn feeds the people. We’re isolated from Denver through the mountains, and we are pretty resourceful people. But if you take away our water supply, we’re left with virtually no way to move forward.”¹⁶

Finally, there are social costs that must be weighed. Resource boomtowns in the US have become synonymous with rapid spikes in crime, substance abuse, and sex trafficking, all of which have disastrous effects on the livelihoods of local communities. For example, in North Dakota’s Bakken oilfields, the influx of cash and workers has tripled the rate of murders, aggravated assaults, and robberies.¹⁷ Sex crimes, rape, prostitution, and human trafficking have increased by 20.2 percent. *Business Insider* summarized the region thusly: “Law enforcement says Bakken is a made to order market for sex trafficking.”¹⁸ These problems are exacerbated by limited capacity of “small town” governments to respond to the sudden rise of “big city” issues. Domestic violence is becoming more prevalent, and there are sharp increases in DUIs and bar fights. Officers are often unable to find the location of emergencies because roadmaps are changing monthly due to the construction of new roads and oil camps, and response times are further delayed by traffic congestion. Stress generated by increased crime induces high turnover

¹³ See “County Case Study: Natural Gas – Tarrant & Johnson Counties, Texas,” p. 4.

<https://www.doi.gov/sites/doi.opengov.ibmcloud.com/files/uploads/County%20Case%20Studies%20DRAFT%20090215.pdf>

¹⁴ Center for American Progress and Center for Western Priorities, *Fair Share Scorecard*, August 2015, p.6.

Available at: <https://www.americanprogress.org/issues/green/report/2015/08/17/119374/fair-share-scorecard/>

¹⁵ http://www.nytimes.com/2015/08/11/us/durango-colorado-mine-spill-environmental-protection-agency.html?_r=0

¹⁶ *Ibid.*

¹⁷ <http://www.washingtonpost.com/sf/national/2014/09/28/dark-side-of-the-boom/>

¹⁸ <http://www.businessinsider.com/sex-traffickers-in-the-oil-patch-2015-3>

rates for officers, and law enforcement agencies are unable to retain employees when competing against the large salaries offered by the oil industry. Soaring housing costs exceed the salaries of entry-level officers, forcing some to live in their cars or in homeless shelters. This further accelerates the high turnover rates for officers.¹⁹

Americans most directly affected by resource extraction cannot gain an adequate understanding of the benefits of nearby activity without payment data much more granular than what is currently available. The American Petroleum Institute (API) has lobbied for a Section 1504 rule that allows companies to report anonymously at the first tier below national level. In the United States, that would see companies report by state. States, however, are large, and often have extraction operations scattered throughout. API's approach would provide residents of Texas' natural gas-rich panhandle cities, for example, nearly no information about nearby operations, as payment information linked to local operations would be aggregated with information tied to operations hundreds of miles away.

We thank the Securities and Exchange Commission for the opportunity to comment on the need for project level payment information about extraction in the United States, and urge you to release a strong rule for Section 1504 of Dodd-Frank. A rule for Section 1504 that mandates project level disclosure would help the federal government ensure that it is receiving its due from extractives companies. It would similarly provide all Americans – particularly those located near extraction sites – with the information they need to verify that their communities are receiving a fair return for their natural resource wealth. Finally, releasing a rule that defines project in terms of a contract, license, or lease would compel the EITI to follow suit. Project level data would prove immensely valuable to an array of actors in the 48 countries currently implementing EITI, not least of all those in the United States.

Sincerely,

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¹⁹ <http://www.citylab.com/politics/2013/10/why-energy-boomtowns-are-nightmare-law-enforcement/7274/#.UmKnZrR84tI.facebook>

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