September 23, 2016

Submitted via email (rule-comments@sec.gov)

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Release Nos. 33-10098; 34-78086; File No. S7-10-16 – Proposed Rules on the Modernization of Property Disclosures for Mining Registrants

Dear Mr. Fields:

Alliance Resource Partners, L.P. ("ARLP" or the "Partnership") hereby submits these comments on the *Modernization of Property Disclosures for Mining Registrants* proposal issued by the Securities and Exchange Commission (the "SEC" or "Commission"). The proposal would rescind Industry Guide 7 ("Guide 7"), incorporate existing disclosure requirements and introduce substantial new disclosure requirements as a new subpart of Regulation S-K.

The stated objective of the proposal is to provide investors with a more comprehensive understanding of a registrant's mining properties in an effort to help them make more informed investment decisions. The proposal is also intended to alter the Commission's disclosure requirements and policies for mining properties and seeks to align them with current industry and global regulatory practices and standards. The proposal is a significant departure from the current disclosure framework that has been in place for many years and would place significant burdens on registrants. Further, the proposal would, if promulgated along the lines proposed, require disclosure of highly technical and competitively sensitive information that we do not believe would be beneficial to investors, but would jeopardize the Partnership's ability to bargain with its customers for the price of our coal and would afford our competitors access to highly sensitive financial and reserve information that they could use to compete against us for many things including additional reserves.

Because we are a domestic coal mining company, we are not listed on a global exchange and therefore have not been subject to the global reporting standards with which the Commission is attempting to align its disclosure requirements. The adoption of this proposal would result in a significant change in both the amount and types of disclosures required by us, and while there are aspects of the proposal that we support, there are numerous areas that give rise to serious concerns.

The proposed rules would require registrants to disclose massive amounts of additional exploration, geologic and property data pertaining to each of the properties they own or control in connection with their mining operations. Some of the information the rules seek registrants to disclose is proprietary, confidential and/or subject to agreements that legally prohibit such disclosure. As explained in greater detail below and

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in the Appendix to this letter, the extent and nature of these disclosures, which are unhelpfully focused on tract-level detail, will not be useful to investors in evaluating potential investments in registrants. The proposed disclosures will: (1) overwhelm and confuse investors; (2) impose an undue burden on registrants; (3) and require the disclosure of proprietary and/or confidential information that will, among other things, cause the breach of certain contractual obligations, result in competitive disadvantages for registrants, and lead to an overall reduction in the value of current investors' holdings.

We have addressed the Commission's request for comments in the Appendix to this letter. While the Appendix provides our comprehensive responses to the Commission's request for comments, our most significant concerns arise from the following proposed requirements:

1. The requirement to disclose massive amounts of property data on a tract-level basis, including maps, property descriptions, identities of lessors, lease terms (including royalty rates and expiration dates), and title data.
2. The requirement to disclose and categorize mineral resources.
3. The requirement to disclose feasibility study information.
4. The requirement to disclose life of mine plans.
5. The requirement to disclose exploration results.
6. The requirement to use a 24-month price ceiling as a maximum commodity price ceiling for mineral resources and reserve estimation.
7. The requirement to use a discounted cash flow analysis to establish economic viability of a reserve.
8. The requirement to disclose various aspects of our "economic analysis," including internal rates of return and payback information.

This information will not increase transparency for investors, but is much more likely to create confusion. Much of the information proposed for disclosure would be obscure to investors who lack context and analysis of the information from knowledgeable professionals. These requirements will instead saddle registrants with cumbersome, extensive and detailed disclosure requirements that include sensitive and confidential business information that would be both extremely onerous and costly to provide while also being adverse to our short and long term interests as an issuer and a going concern.

1. Property Disclosures[1]

The requirement[2] to disclose the location of each tract of property, accurate within one mile, using an easily recognizable coordinate system, complete with maps, with proper engineering detail to portray the location of the property is overly burdensome and would require dozens of maps for each operation in order for the hundreds of less-than-one-acre tracts to be legible when printed with their Tract ID. Active coal operations often have thousands and even tens of thousands of acres under control by ownership and/or lease. Many of the parcels/tracts are small, some less than an acre. Alternatively, we believe a general description of the issuer's property that does not entail tract-specific information unless material within the meaning of the securities laws would be more meaningful for investors.

The requirement[3] to provide a detailed listing of leases and related information, including expiration dates and royalty rates, raises serious concerns for us and the entire industry. It is not uncommon for an individual tract to be owned by a dozen or more people, each of whom may have a separate lease or option that may

[1] Discussed in the Commission's proposal at II. Proposed Mining Disclosure Rules, G. Specific Disclosure Requirements, 2. Requirements for Individual Property Disclosures & 3. Requirements for Technical report Summaries.
[2] Proposed Item 1304(b)(1)(ii) and proposed Item 601(b)(96)(iv)(B)(3)(i), both of Regulation S-K
[3] Proposed Item 1304(b)(1)(iii) and proposed Item 601(b)(96)(iv)(B)(3)(iii), both of Regulation S-K

contain terms different from his or her co-owners – and sometimes such tracts have 50 or 100 owners and a corresponding number of leases or options. A requirement for a "detailed listing" of this information will result in the production of thousands of pages of data about individual properties. The extent and nature of these disclosures will not help investors to make more informed decisions; rather, investors will be intimidated by the sheer volume of data, and the underlying information, which consists of extensive tract-level detail, will be of no use to individual investors in evaluating whether to invest in a particular registrant. The proposal would treat granular information for an individual tract as material even though it is but a small part of an exponentially larger mining operation (which, in our case, is also but one of several mining operations). This requirement will not provide material, meaningful, or helpful information for investors.

The detailed tract-by-tract summaries and maps required by the proposed rules do not currently exist. Gathering the necessary information and then preparing the summaries and maps will require a team of individuals dedicated solely to those tasks, which would be costly and burdensome in any industry, but especially taxing in the mining industry, which already is burdened by substantial regulatory oversight and reporting obligations.

In addition, it will be literally impossible to comply with all of the disclosure requirements. For example, most of our leases do not have a set expiration date, but instead expire upon "exhaustion of the coal" or grant us the right to fully or partially release them when it makes sense to do so from an operational perspective, and yet the proposed rules would require us to include expiration dates for all such leases.

We also have concerns with the proposed requirement[4] to disclose how mineral rights were obtained, including any conditions that the registrant must meet in order to retain the property. It is unclear exactly what kind of and/or how much information is required, and this requirement could be construed as requesting disclosure of title data, which is proprietary information that registrants spend a great deal of money to acquire from attorneys and title companies. We could potentially summarize this information at a higher level, such as by seam, but there would nonetheless be challenges in terms of dealing with slurry vs. non-slurry storage/injection rights, different types of surface rights, post-termination rights, etc. in this higher-level summary.

The proposed requirement[5] to include significant encumbrances to the property, including current and future permitting rights and associated timelines, permit conditions, and violations and fines would require a significant investment of time, is duplicative in that most of this information is provided to other agencies, and it would be extremely challenging to ensure that the information is both accurate and complete.

We believe that disclosing other significant factors and risks that may affect access, title, or the right or ability to perform work on the property, as required,[6] is vague and could be read to require divulging proprietary geologic conditions and other sensitive or confidential information. Requiring such disclosures would undermine our operations and require changes to our mine plans on a consistent basis.

In addition to being unhelpfully voluminous and unnecessarily detailed, certain information also will be outdated by the time it is produced and viewed by investors because of the myriad factors that affect title to and/or control of individual tracts and/or our ability to operate upon them as part of a larger mining operation, whether by virtue of our actions (*e.g.*, acquiring new interests, selling interests, dropping leases, or making mine-plan or permitting changes), those of an individual property owner (*e.g.*, selling rights or encumbering existing rights), of geological or market conditions beyond our control, or of the terms of a given lease, option, or other control instrument (*e.g.*, expiration, cancellation, or other termination).

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[4] Proposed Item 1304(b)(1)(iii) and proposed Item 601(b)(96)(iv)(B)(iv), both of Regulation S-K
[5] Proposed Item 1304(b)(4) and proposed Item 601(b)(96)(iv)(B)(3)(v), both of Regulation S-K
[6] Proposed Item 1304(b)(1)(iii) and proposed Item 601(b)(96)(iv)(B)(3)(vi), both of Regulation S-K

Finally, the proposed rules would require registrants to disclose information that is proprietary and/or confidential. These disclosures could breach contractual obligations (*e.g.*, by violating the terms of certain of our leases that prohibit publishing/recording) and violate the privacy of our lessors and other interest holders by publishing their names, addresses, and land holdings together with their royalty positions, which we have long considered confidential information. Furthermore, releasing proprietary geological and operational data together with a compilation of our land holdings would allow public citizens and competing land and coal companies to take advantage of land holders and coal operators by acquiring rights before registrants are able to do so, placing registrants at a severe competitive disadvantage relative to non-registrant operators. We obtain and assemble this information at a great cost and making it publicly available would confer an economic benefit on our competition at our expense.

2. Treatment of Mineral Resources[7]

A registrant should not be required to disclose mineral resource information. As defined, resources are marginally economic and reporting resource tons could mislead investors with limited knowledge of the mining industry into believing that a mining operation has a larger number of future saleable tons than would likely be the case. Because resources are considered economically marginal and of lower certainty to begin with, dividing resources into low, middle, and high level of certainty offers little value. Disclosing the level of certainty tends to give additional credibility to the resources as a whole that may not be warranted.

In the alternative, if the Commission does require disclosure of mineral resources, we believe the Commission should consider following the practice of CRIRSCO and require only disclosure of all material assumptions and the factors considered in classifying mineral resources versus detailed disclosure of resource information and any disclosure of resources should be exclusively a quantitative estimate of tonnage, with material assumptions. We believe mineral resources should not be based on an initial assessment prepared by a qualified person using assumed unit costs for operations which include pricing, costs, and other cash flow information. For active operations, this information is proprietary and quite sensitive and confidential. Requiring disclosure of this information would provide competitors with unfair advantages, and would allow our customers to better understand our costs and, ultimately, profits, thereby impairing our ability to generate revenues.

3. Feasibility Study Information[8]

For the coal industry, the condition that mineral reserves be based on a pre-feasibility or feasibility study is misguided and should be excluded in its entirety. For coal companies operating in well-defined coal fields, these types of formal studies are not typically conducted, as on-going operations provide all the feasibility information that is required. We estimate the cost of compliance to prepare feasibility studies for all our material mining operations could cost several million dollars and provide us no benefit as all of our material mining operations are active operations. Furthermore, if we were to identify a potential new mining operation, we may not necessarily need an initial assessment to disclose exploration costs and mineral resources, pre-feasibility study or feasibility study to allow us to make informed decisions. Making these types of reports a prerequisite would require us to incur significant additional costs in the range of several

[7] Discussed in the Commission's proposal at II. Proposed Mining Disclosure Rules, E. Treatment of Mineral Resources. Disclosure requirements for mineral resources also include proposed Item 1303(b)(3), and Item 1304(b)(7), both of Regulation S-K and included in the proposed Table 6.

[8] Discussed in the Commission's proposal at II. Proposed Mining Disclosure Rules, F. Treatment of Mineral Reserves, 2. The type of study required to support a reserve determination. Disclosure requirements for pre-feasibility and feasibility studies include proposed Item 1302(d) of Regulation S-K.

hundred thousand dollars, which we would not otherwise incur. In addition, due to the competitive bid nature of the coal industry, releasing feasibility information publicly would put a registrant at a huge disadvantage. Mining competitors could use the information to place bids below the disclosed pricing. Utilities could use the information to justify squeezing the margin a registrant makes between the costs and contract price. Suppliers could use the information to justify charging the registrant a higher rate. Capital disclosures could benefit competitors/vendors as well. Mineral owners could use the information to extract a higher royalty rate from the registrant. Competitors or other individuals could use mineral property information to interfere with the registrant's operations. These additional disclosures would clearly harm investors by putting the registrant at a huge competitive disadvantage, particularly relative to private coal mining companies and by forcing registrants to incur costs that private coal mining companies would not likely incur.

Requiring feasibility studies also opens the Commission and investors up to stock "pumping" schemes by making a potential operation appear to be economically profitable and credible as a result of it being disclosed in a regulatory filing and prepared by a qualified person. This could generate significant initial interest driving up the stock price of a registrant only to lose value when the disclosed economics do not pan out. An alternate solution would be to report tonnages for reserves or resources with additional information (thickness, quality, surrounding strata, depth, etc.) that investors can compare to other publicly-traded companies.

We believe public disclosure of the feasibility information and data described in the proposal would render the development of mining projects by registrants on private lands in the United States impracticable from a practical standpoint, as customers, competitors, mineral owners, land owners and various suppliers of equipment, materials, supplies and services would have access to the detailed economics of the project which they would use for competitive advantage. Accordingly, if the disclosure requirements relating to feasibility studies are imposed upon registrants, their only logical recourse will be to cease reporting development projects and the associated mineral resources or reserves rather than risk the disclosure of proprietary and competitively sensitive feasibility information, which would ultimately impede, rather than advance, an investor's ability to adequately value these companies.

4. Life of Mine Plans[9]

The Commission should also avoid requiring a life of mine plan. Mine plans often include areas not yet controlled by the company. Reserves currently reported to the Commission do not include uncontrolled reserves. For the coal industry, disclosing mine life plans would allow competitors or individuals to interfere with operations by acquiring strategic mineral rights already targeted by the registrant. This interference could also raise the costs used in determining whether the mining operation was expected to be economically viable, which in turn would negatively impact the registrant's future profitability by lowering expected margins or even rendering the entire operation uneconomic. Further we feel that the Commission should exclude life of mine plans because they are always subject to change, depending upon the market and physical conditions encountered, and could lead potential investors to incorrectly assume that mining is possible under all conditions, the mine plans are also subject to change and could be outdated by the time they are disclosed.

[9] Discussed in the Commission's proposal at II. Proposed Mining Disclosure Rules, F. Treatment of Mineral Reserves, 2. The type of study required to support a reserve determination. Disclosure requirements for life of mine plans include proposed Item 1301(d)(13)(iii) of Regulation S-K.

5. Treatment of Exploration Results[10]

A registrant should not be required to disclose exploration results. We consider this information to be highly sensitive and confidential information. Disclosure of exploration results would put a registrant at a competitive disadvantage by revealing information that would permit competitors to obtain a free ride on the registrant's efforts and expenditures and would almost certainly interfere with the registrant's acquisition of critical mineral properties as other companies can use the information disclosed to make their own valuations and compete with the registrant for the mining rights. In addition, the proposed rules address the limitation of exploration results to derive tonnage, grade, or other quantitative estimates. We agree that the disclosure of some summary information about exploration results may be useful to attract capital and investors, but disclosure of the actual results in the manner proposed is very likely to mislead investors into thinking that a property is more economically viable than it may actually be given the low level of certainty. We further believe that publishing this exploratory technical information may be interpreted as giving credibility to a mineral property that may not be warranted. Most investors do not have the technical expertise, or financial ability to engage someone with the necessary expertise, to review the information. A registrant should not have to disclose material exploration results for each of its material properties for coal mining operations. In addition to the reasons stated previously, the disclosure would include an immense amount of confidential and proprietary data representing a large financial investment by the registrant. We estimate the cost of exploration to be several million dollars per material mining operation. Making such confidential and proprietary data available to the investment public would also provide our competitors with free access to information that we incurred significant costs and efforts to obtain and prepare.

6. 24-month price ceiling[11]

The 24-month period in the proposal as a maximum commodity price ceiling for mineral resource and reserve estimation is too short because pricing for a commodity such as coal can vary and fluctuate widely in a relatively short period of time depending on quality and location. The Commission may desire to make the determination of resources and reserves uniform across commodities, but coal, in particular, does not have a single market on which registrants can rely, resulting in a lack of comparability between registrants with respect to pricing. Because of this lack of comparability and the fluctuations in coal prices between registrants, the 24-month price ceiling would not provide meaningful information about a registrant's reserves to investors. We propose that registrants use forward price curves developed through use of industry specific curves and actual experience, as well as qualitative assessments, to determine the economic viability of mineral resources and reserves. While there is a subjective element to the qualitative assessment, utilization of these methods in determining the economic viability of mineral resources and reserves would result in more meaningful and accurate, and less potentially misleading, information being provided to investors.

[10] Discussed in the Commission's proposal at II. Proposed Mining Disclosure Rules, D. Treatment of Exploration Results. Disclosure requirements for exploration results include proposed Item 1304(b)(6) or Regulation S-K.

[11] Discussed in the Commission's proposal at II. Proposed Mining Disclosure Rules, E. Treatment of Mineral Resources, 3. The initial assessment requirement & F. Treatment of Mineral Reserves. Disclosure requirements for 24-month price ceiling include Instruction to proposed Item 1302(c) and proposed Item 1303(b)(3), both of Regulation S-K.

7. Discounted Cash Flow Analysis[12]

There should be no requirement to use a discounted cash flow analysis to establish the economic viability of reserves. Most publicly-traded companies submit pricing and cost data that is readily available from quarterly reports on the Commission's website particularly as it relates to discussions in MD&A in Form 10-K and Form 10-Q. Individuals have the ability to aggregate this information and make their own decisions. The submittal of specific discounted cash flow information informs competitors about sensitive information that can be used to the detriment of the registrant for the same reasons that we previously outlined in our concerns regarding the disclosure of feasibility study information. Contract prices are also used in our cash flow analyses and are highly confidential and should not be made public in any form.

8. Economic Analysis Information

Likewise a number of required disclosures[13], such as internal rates of return and payback information for properties, would be competitively disadvantageous for registrants to report, as this information can be used by non-registrants, competitors, or other individuals to interfere with the registrant's operations. Also this information is clearly proprietary and used by management to inform their decision-making process. This level of disclosure is also unprecedented throughout the Commission's other rules and regulations and is tantamount to requiring disclosure of due diligence information prior to a business acquisition which could reveal management's methods, processes, and potential trade secrets. We believe disclosure of the results of our economic analysis is not appropriate and does not provide an investor with meaningful information with which to make informed investment decisions.

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[12] Discussed in the Commission's proposal at II. Proposed Mining Disclosure Rules, E. Treatment of Mineral Resources, 3. The initial assessment requirement, and F. Treatment of Mineral Reserves, 2. The type of study required to support a reserve determination. Disclosure requirements for discounted cash flow analyses include instruction 3 to proposed Item 1302(c), proposed Item 1302(d), and proposed Item 1303(d)(13)(iii), each of Regulation S-K.

[13] Proposed Item 601(b)(96)(iv)(B)(21) of Regulation S-K

We would be pleased to meet in person, or speak by phone, to discuss our comments with the Commission or its staff at your convenience. Any questions regarding our comments may be directed to Ernie Thacker at [redacted] or Robert J. Fouch at [redacted].

Very truly yours,

Ernie Thacker, P.E., P.G.
Vice President of Engineering and Geology
Alliance Resource Partners, L.P.

Robert J. Fouch
Vice President and Controller
Alliance Resource Partners, L.P.

cc: Brian L. Cantrell, Chief Financial Officer
Thomas M. Wynne, Chief Operating Officer
R. Eberley Davis, General Counsel and Secretary
Kendall S. Barret, Vice President – Land Management & Corporate Counsel

Appendix – Responses to specific questions raised in the Commission's proposed *Modernization of Property Disclosures for Mining Registrants*

Question 1: The Commission's current mining disclosure regime consists of disclosure requirements located in Item 102 of Regulation S-K and disclosure policies located in Guide 7. Has this disclosure regime caused uncertainty for mining registrants? If so, would establishing a sole regulatory source for mining disclosure by rescinding Guide 7 and including the disclosure requirements for mining registrants in a new Regulation S-K subpart, as proposed, reduce this uncertainty?

> **Response:** As a producer that has been involved in the coal mining industry since 1971, and as a public registrant with Mapco Inc. from 1971 to 1996 and as ARLP since 1999, the current disclosure rules have provided certainty regarding required disclosures. Not surprisingly, over this same time period, the related comments received from the SEC staff regarding our reserve disclosures have been minimal. That being said, we recognize that having two regulatory sources for mining disclosures, along with numerous pieces of staff interpretive guidance, could cause uncertainty, and that a single source for mining disclosures within Regulation S-K would be beneficial and provide clarity for all registrants.

Question 2: Should we amend Item 102 of Regulation S-K by eliminating the instruction that refers mining registrants to the information called for in Guide 7 and instead instruct them to refer to, and if required, provide the disclosure under new Regulation S-K subpart 1300, as proposed? Should we instead retain Guide 7 and Item 102 of Regulation S-K as separate sources for mining disclosures? If so, how should they apply to registrants?

> **Response:** If the Commission pursues this new proposal, we support the removal of the instruction that references Guide 7 and the addition of a referral to the new proposed Regulation S-K subpart 1300. Retaining Guide 7 as a separate source for mining disclosures if the new proposal is adopted would create confusion because Guide 7 differs from the proposed disclosure requirements in the new Regulation S-K subpart 1300. We therefore support the retirement of Guide 7 if the Commission adopts the new proposal.

Question 3: Should the disclosure standard under the revised mining disclosure rules be whether a registrant's mining operations are material to its business or financial condition, as proposed? Why or why not? If not, what standard should we adopt for determining whether a registrant must provide the mining disclosure under the revised rules? Why?

> **Response:** We have strong objections to the proposed disclosures as outlined in our comments. We believe appropriate disclosures are warranted for factual matters that are both material to the business or financial condition of a registrant and helpful to the investor.

Question 4: Are the quantitative and qualitative factors described in this section relevant to the determination of the materiality of a registrant's mining operations? Why or why not? Are there other factors, such as those identified in Canada's Companion Policy 43- 101CP to National Instrument 43-101, General Guidance, that a registrant should consider for the materiality determination instead of or in addition to the factors described in this section? Should we include these or other factors as part of the rule provision governing the materiality determination? If so, which factors should we include in the rule?

> **Response:** The quantitative and qualitative factors discussed in the proposal are not inconsistent with current guidance with respect to the determination of materiality. However, we encourage the Commission to adopt the guidance in Accounting Standards Codification ("ASC") 280, *Segment Reporting*, to determine if a property constitutes a material mining operation. We believe the

quantitative and qualitative considerations outlined in the guidance with respect to reportable segments would incorporate the considerations outlined in the proposal as well as address many of the Commission's questions posed in the proposal.

Question 5: Should we adopt the proposed presumption that a registrant's mining operations are material if they consist of 10% or more of its total assets? Would a percentage higher or lower than 10% be better than the proposed threshold? Why or why not? Should it be a presumption, as proposed, or should it be a bright line requirement? If the former, how might the presumption be rebutted? Is there another quantitative factor, such as revenues, that a registrant should consider instead of or in addition to the proposed asset test?

Response: While the use of 10% or more of assets is consistent with other measures under a variety of Commission forms and rules, it speaks only to a registrant's financial condition. As previously suggested, we recommend that the Commission define a property using the same criteria as an operating segment under ASC 280. This change to the proposal would: (1) provide clarity to registrants and investors as to what comprises a "property"; (2) allow a consistent determination as to whether a registrant's properties are material to its operations or financial condition; and (3) align a registrant's property disclosures to its reportable segments.

Because registrants are already determining their reportable segments by first determining operating units that are the components of a business, aligning the definition of property with an operating segment would synchronize and facilitate the disclosure requirements outlined in the proposal with how a registrant records and monitors its properties. An operating segment is a business that: (1) engages in business activities from which the business may earn revenues and incur expenses; (2) has its results reviewed by a chief operating decision maker to allocate resources and access performance; and (3) maintains discrete financial information. To determine if an operating unit is a reportable segment, ASC 280 outlines the following quantitative thresholds:

a. Its reported revenue, including both sales to external customers and intersegment sales or transfers, is 10 percent or more of the combined revenue, internal and external, of all operating segments.
b. The absolute amounts of its reported profit or loss is 10 percent or more of the greater, in absolute amounts, of either:
    1. The combined reported profit of all operating segments that did not report a loss.
    2. The combined reported loss of all operating segments that did report a loss.
c. Its assets are 10 percent or more of the combined assets of all operating segments.

The guidance goes on to provide a qualitative threshold that allows a registrant to determine that an operating segment is a reportable segment if the registrant believes information about that segment would be useful to readers of the financial statements.

Determining the materiality of mining operations using the same materiality thresholds as those considered under ASC 280 would align how the registrant currently discusses its businesses in its filings with the property disclosures being considered under this proposal. We do not believe that the adoption of these materiality thresholds would preclude a registrant from including property disclosures for non-material mining operations if it wishes.

Question 6: When assessing the materiality of its mining operations, should we require a registrant to aggregate all of its mining properties, regardless of size or type of commodity produced, including coal, metalliferous minerals, industrial materials, geothermal energy, and mineral brines, as proposed? Why or

why not? Should we exclude any of the specified commodities from the proposed aggregation requirement? If so, which commodities and why?

> **Response:** We believe ASC 280 provides sufficient aggregation guidance to align the property disclosures with a registrant's reportable segments. As the economics are not likely similar between different types of commodities, they would likely not be aggregated. Use of different aggregation requirements could result in property disclosures that do not align with a registrant's reportable segments. Additionally, the requirement that a company include enough properties to account for 75% of all revenue would capture all significant mining operations.

Question 7: When assessing the materiality of its mining operations, should we require a registrant to include, for each property, as applicable, all related activities from exploration through extraction to the first point of material external sale, including processing, transportation, and warehousing, as proposed? Why or why not? Is "the first point of material external sale" the appropriate cut-off or should we use some other measure? Are there certain activities that we should exclude from the materiality determination, even if they occur before the first point of material external sale? If so, which activities, for which minerals or companies, and why? Are there certain activities after the point of first material external sale that we should include? If so, which activities, for which minerals or companies, and why?

> **Response:** We agree with the Commission's proposal to include these activities in a registrant's determination of whether a mining operation is significant. We believe this is consistent with both our recommendation to equate mining operations to operating units under ASC 280 and current practice.

Question 8: Are there specific qualitative or quantitative factors relating to the environmental or social impacts of a registrant's properties or operations that a registrant should consider in making its materiality determination?

> **Response:** We do not believe that additional specific qualitative or quantitative factors relating to the environmental or social impacts of a registrant's properties or operations should be considered by a registrant in determining the materiality of its properties, as environmental and social impacts are considered in the use of the criteria we suggested above through the costs and obligations associated with the permitting process with federal and state regulators. To include additional, possibly subjective, factors that neither cause a registrant to suffer costs or incur obligations would create a lack of comparability between registrants and could create instances in which property disclosures might be required even though the registrant has determined that a mining operation does not rise to the level of a reportable segment or included as part of a reportable segment.

Question 9: Should we require vertically-integrated companies, such as manufacturers, to provide the disclosure required under new Regulation S-K subpart 1300, as proposed? Why or why not?

> **Response:** We believe that the Commission should apply the materiality criteria we previously recommended to vertically-integrated companies. We generally believe that if mining operations are deemed material to a vertically-integrated company, those operations will be determined to be reportable segments or included as part of a reportable segment in some manner. As discussed previously, we believe that, at a minimum, the proposed property disclosures should align with a registrant's reportable segment determination.

Question 10: Should we require a registrant with multiple properties to provide the disclosure required by proposed Regulation S-K subpart 1300, as proposed? Why or why not? Should we require a registrant with multiple properties, none of which is individually material, but which in the aggregate constitute material

mining operations, to provide only summary disclosure concerning its combined mining activities, as proposed? Why or why not?

Response: For companies with multiple properties, some level of aggregation will need to occur if the thresholds outlined in ASC 280 are adopted. As previously discussed, those thresholds require reportable segments to represent at least 75 percent of total consolidated revenues. Therefore, we suggest using ASC 280 as guidance, under which property disclosure for mining operations that comprise at least 75 percent of consolidated revenues would be required. Again, we believe that, at a minimum, the proposed property disclosures should align with a registrant's reportable segment determination.

Question 11: Are there difficulties that a registrant with multiple properties could face when determining if disclosure is required under the proposed rules? If so, how should our mining disclosure rules address such difficulties?

Response: We believe if the Commission uses the guidance in ASC 280, registrants with multiple properties would not face additional difficulties outside of their determination of reportable segments. If a mining operation is included as, or as part of, a reportable segment, a registrant should be subject to the property disclosure rules.

Question 12: Should we require more detailed disclosure about individual properties that are material to a registrant's mining operations, as proposed? Why or why not?

Response: We believe that the current proposal is unclear in its definition of "property" and whether it is specific to a tract as small as 10 acres or if it is referring to all tracts within a reserve area. We believe property disclosures should speak to the entire reserve area consistent with current requirements and as addressed in our responses to Questions 99 and 100. If the proposal used a reserve area definition for property there would not be a need to have a summary level of disclosure for individually non-material properties that are significant in the aggregate versus a more detailed level of disclosure for individually material properties.

Question 13: Should we require a royalty company, or a company holding a similar economic interest in another company's mining operations, to provide all applicable mining disclosure if the underlying mining operations are material to its operations as a whole, as proposed? Why or why not? Should disclosure for such companies be required under other circumstances?

Response: We have concerns about the proposal's requirement that royalty companies or companies holding a similar economic interest in another company's mining operations ("Royalty or Similar Companies") include the same property disclosures as companies with mining operations. Royalty and Similar Companies do not have mining operations and hold only a passive interest in properties. Royalty and Similar Companies generally do not have access to the information needed to properly conduct the analysis required and/or to generate the proposed disclosures. Also, the royalty interests held by the company may not align with the definition of property used by the registrant, as in many instances there are numerous royalty owners for each specific tract in a mining operation, and attributing discrete financial information to these royalty interests would be impossible for Royalty or Similar Companies without the assistance of the mining operation that holds the property. This dependence on outside parties could create issues with the confidential nature of some of the information required to make the disclosures, and could potentially result in the inclusion of property disclosures that do not align with the interests held by the registrant, which would not be useful – or beneficial – to investors. We therefore believe that, to the extent Royalty or Similar Companies are included in the proposed disclosure requirements,

they should only be required to make general summarized disclosures utilizing internal non-confidential data within their possession. However, the better solution would be to exclude Royalty or Similar Companies from the scope of the property disclosures in their entirety.

Question 14: Should we permit a royalty company, or other similar company holding an economic interest in another company's mining operations, to provide only the required disclosure for the reserves and production that generated its royalty payments, or other similar payments, in the reporting period, as proposed? Why or why not? If not, what additional disclosure should be required by such registrants?

Response: We believe that Royalty or Similar Companies should not be required to make property disclosures. See our response to Question 13.

Question 15: Should we require a royalty company, or other similar company holding an economic interest in another company's mining operations, to describe its material properties and file a technical report summary for each such property, as proposed? Should we allow a royalty or other similar company to satisfy the technical report summary requirement by incorporating by reference a current technical report summary filed by the producing mining registrant for the underlying property, as proposed? Are there circumstances (e.g. when a royalty company purchases a royalty agreement and is not reasonably able to gain access to such information) in which a royalty or similar company should not be required to file a technical report summary concerning the underlying property?

Response: We believe that Royalty or Similar Companies should not be required to make property disclosures. Incorporating another registrant's technical report summary by reference also creates potential legal concerns, especially if a qualifying person is considered an expert and a consent is required as proposed. See our response to Question 13.

Question 16: Should we define "exploration stage property," "development stage property" and "production stage property," as proposed? Why or why not? Would these definitions facilitate compliance by registrants with properties in more than one stage of operation?

Response: While we believe the proposal's definition of property in unclear, we believe the stage definitions will provide consistency in discussions by registrants about the stage of a specific mining operation or property.

Question 17: Should we also revise the definitions of "exploration stage issuer," "development stage issuer" and "production stage issuer," as proposed? Why or why not? Should the definition of "development stage issuer" and "production stage issuer" depend on having "at least one material property", as proposed? Should we instead base the definitions on consideration of the characteristics of all mining properties? For example, if a registrant has a single development-stage material property that constitutes 10% of its mining assets, with the remainder of the mining assets all constituting exploration stage properties, should the registrant be able to identify itself as a development stage issuer?

Response: We are supportive of the Commission's proposal to define "exploration stage", "development stage" and "production stage" issuers as this would remove any ambiguities that currently exist in Guide 7. The new proposal incorporates prior staff guidance on how a registrant applies these definitions, therefore maintaining consistency in how registrants and investors view these definitions.

Question 18: Would the two proposed sets of definitions appropriately classify the particular stage of a registrant's mining operations? Should the definitions be property-based and dependent on whether mineral resources or reserves have been disclosed, are being prepared for extraction, or are being extracted, as

applicable, on one or more material properties? Would having two proposed sets of definitions create unnecessary complexity or investor confusion?

Response: Whether the two proposed sets of definitions creates "unnecessary complexity or investor confusion" will depend on how the Commission defines property. If the Commission adopts a reserve area focus rather than a tract level focus in its definition of a property, the two proposed sets of definitions should provide sufficient consistency on how these properties are discussed among registrants. We do not believe the Commission should adopt a tract-level definition and doing so would create substantial confusion. Requiring descriptions of numerous tracts at different stages is unnecessarily complex and would likely confuse investors, particularly if several tracts are at a stage other than the stage of the registrant overall.

Question 19: Should the proposed rules specify that a registrant that does not have mineral reserves on any of its properties, even if it has mineral resources or exploration results, or even if it is engaged in extraction without first disclosing mineral reserves, cannot characterize itself as a development or production stage company, as proposed? Why or why not?

Response: We believe it is reasonable to define a development or production stage entity as having mineral reserves at one of the material properties and to characterize itself as a development or production stage company given the differences in risk profiles. We believe mineral reserves disclosures would need to be made prior to a change in characterization given the importance of those reserves to a development or production stage registrant.

Question 20: Should we require, as proposed, that the determination of mineral resources, mineral reserves and material exploration results, as reported in a registrant's filed registration statements and reports, be based on and accurately reflect information and supporting documentation prepared by a qualified person? Why or why not? Would imposing a qualified person requirement help mitigate the risks associated with including disclosure about a registrant's mineral resources and exploration results in SEC filings, given that mineral resources and exploration results reflect a lower level of certainty about the economic value of mining properties? Why or why not?

Response: We believe a qualified person should perform mineral resource/reserve estimates and should be the basis for any property disclosures. We do not believe the supporting documents of mineral resources and mineral reserves estimates, even in the form of a technical report summary should be made public, but should be retained as underlying support for a registrant's tonnage disclosures. In our opinion, reporting exploration results and mineral resources gives instant credibility to marginal properties and could easily be manipulated to mislead the uneducated investor. The risk from mineral resource and exploration results would not be diminished by using a qualified person but could potentially give more credibility to mineral resources and exploration results than would otherwise be warranted.

Question 21: Should the registrant be responsible for determining that the qualified person meets the qualifications specified under the new subpart's definition of "qualified person" as proposed? Why or why not? If not the registrant, who should be responsible for this determination?

Response: A registrant should be responsible to ensure that a qualified person prepares the registrant's mineral resource/reserve estimates by checking that they have an appropriate certification or license; however, the professional organizations and/or state agencies issuing certifications or licenses should determine if the person is qualified prior to issuing the person a certification or license. It is not the registrant's responsibility to have their own testing procedures or to affirm qualifications set by such organizations and/or agencies.

Question 22: Should we, as proposed, require a registrant to obtain a technical report summary from the qualified person, which identifies and summarizes the information reviewed and conclusions reached by the qualified person about the registrant's exploration results, mineral resources or mineral reserves, before it can disclose those results, resources or reserves in SEC filings? Why or why not? Should we instead require a registrant to obtain an unabridged technical report, rather than a technical report summary, before it can disclose exploration results, mineral resources or mineral reserves in SEC filings? Should we require the technical report summary to be dated and signed, as proposed? Why or why not?

> **Response:** We believe that a registrant should obtain a reserve estimate or technical report summary prepared by a qualified person before they disclose information about those reserves. We do not believe that disclosure of exploration results or mineral resources should be required, but should a registrant choose to voluntarily disclose that information we believe that that information should be prepared by a qualified person. A qualified person should be allowed to be independent or internal, but every five years the required technical report summary should be prepared by an independent qualified person or at least reviewed by an independent qualified person. This would help affirm the processes of the registrant's internal qualified person. We do not believe an unabridged version should be required.

Question 23: If we require, as proposed, that a registrant obtain a technical report summary from the qualified person, should we also, as proposed, require that the registrant file the technical report summary as an exhibit to the relevant registrant statement or other Commission filing when one is required? Why or why not?

> **Response:** While we do not believe that a technical report summary should be included as an exhibit to a registrant's filing, we *especially* do not believe that an unabridged technical report should be required because of this would require the disclosure of a very large volume of data and confidential information.

Question 24: Should we require, as proposed, a registrant to file the technical report summary when the registrant is disclosing mineral reserves, mineral resources or material exploration results for the first time or when there is a material change in the mineral reserves, mineral resources or exploration results from the last technical report filed for the property? Why or why not? Should we instead require a registrant to file the technical report summary more frequently, such as with every Commission filing, or less frequently?

> **Response:** If the Commission retains the requirement to include the technical report summary, we believe that it should only be included when the registrant first makes the property disclosures or when significant changes occur. Such a requirement would impose a significant burden on registrants, especially if the type of information required is anything beyond summary level. Evaluation of coal operations requires an immense amount of data and planning and will include voluminous reports, which will almost always contain confidential and proprietary information. Also, please see our response to Question 23.

Question 25: Should we require, as proposed, a registrant to obtain the written consent of the qualified person to the use of the qualified person's name and any quotation or other use of the technical report summary in the registration statement or report prior to filing the document publicly with the Commission? Why or why not?

> **Response:** Since we don't believe that a technical report summary should be attached as an exhibit as noted in our response in Question 23, we do not believe that a consent should be required. Should the Commission retain the requirement to include a technical report summary as an exhibit to our

Form-10K filing, requiring a consent would raise the qualified person to expert status under the Commission's rules, which would increase the qualified person's liability and, consequentially ,the burden on a registrant to have the reports prepared. We do not believe that this increased liability to the qualified person or the increased burden to the registrant benefits investors.

Question 26: Should we require that a registrant identify the qualified person that prepared the technical report summary and disclose whether the qualified person is an employee, as proposed? Why or why not? Should we also require a registrant to name the qualified person's employer if other than the registrant, and disclose whether the qualified person or the qualified person's employer is an affiliate of the registrant or another issuer that has an ownership, royalty or other interest in the property that is the subject of the technical report summary, as proposed? Why or why not?

Response: We believe that the proposed requirement to identify the qualified person and disclose his/her relationship with the registrant is consistent with current disclosure guidance. We believe the addition of identifying whether a qualified person is employed by an affiliate is consistent with disclosing the relationship with the registrant. However, this proposed requirement is unnecessary and would not add value to the registrant's filing. Many outside specialists assist us with various estimations and evaluations used throughout the Form 10-K. Assistance from all of our specialists and outside professionals is important, and assistance regarding reserve estimations is not exceptionally greater than any other area of consultation or professional guidance.

Question 27: Should we require a registrant to state whether the qualified person is independent of the registrant? Why or why not? If we were to require the registrant to state whether the qualified person is independent of the registrant, should we define "independent" for purposes of that requirement? If so, how? For example, should we base the definition of independence on comparable provisions under Canada's NI 43-101? Similar to the Canadian provisions, should we provide examples of when a qualified person would not be considered to be independent? If so, what examples should we provide? Alternatively, similar to the Commission's rule regarding when an accountant is not independent, should we provide that a qualified person is not independent if the qualified person is not capable of, or a reasonable investor with knowledge of all relevant facts and circumstances would conclude that the qualified person is not capable of, exercising objective and impartial judgment on all issues encompassed within the qualified person's engagement? Are there any other alternative standards on which we should base a definition of independence for the purpose of the qualified person requirement?

Response: If the Commission retains the requirement to disclose the qualified person, we believe it is appropriate for a registrant to disclose whether the qualified person is independent. We believe that the Commission should define "independent" consistent with the definition in Canada's NI-43-101 that a qualified person is independent of a registrant if there is no circumstance that, in the opinion of a reasonable person aware of all relevant facts, could interfere with the qualified person's judgment regarding the preparation of the technical report. However, please see the response to Question 26 regarding our view on the necessity to disclose the qualified person.

Question 28: Should we require that a registrant's disclosure of exploration results, mineral resources or mineral reserves in a SEC filing be based on the determination of a qualified person that is independent of the registrant? If so, should we impose such a requirement only under certain circumstances, such as when the filing discloses resources or reserves by the registrant for the first time; a material change in previously disclosed resources or reserves that has occurred or is likely to occur; or a 100% or greater change in the total mineral resources or reserves on a material property, when compared to the last disclosure? In each case, why or why not?

Response: We do not believe there should be a requirement for an independent review. Coal companies have sufficient technical expertise on staff and these employees are more familiar with the properties than any outside reviewer could be under reasonable time constraints. Further, the identification of the report preparation by affiliated persons affords investors sufficient knowledge about who has prepared the reserve estimates. However, see our response to question 22 regarding consideration of a requirement for an independent review by a qualified person every 5 years.

Question 29: Alternatively, rather than requiring the qualified person to be independent, should we require, when the qualified person is affiliated with the registrant or another entity having an ownership or similar interest in the property, that a person independent of the registrant and qualified person review the qualified person's work? If so, what qualifications should the independent reviewer possess? If we require an independent review when the qualified person is affiliated with the registrant, should the review be for all disclosures of mineral resources, mineral reserves and material exploration results, or only those that are related to material properties? Should this review be required only in certain circumstances, such as when the filing discloses resources or reserves by the registrant for the first time; a material change in previously disclosed resources or reserves that has occurred or is likely to occur; or a 100% or greater change in the total mineral resources or reserves on a material property, when compared to the last disclosure? Should we instead adopt an independent review requirement for the work of an affiliated qualified person in all circumstances? In each case, why or why not?

Response: We believe that a review by an independent qualified person should be conducted on all reserves on a five-year basis, or more often if there is a material acquisition of reserves in that timeframe. Reviews should only be required on material properties. We do not believe there should be a requirement for an independent review on a more frequent basis for the reasons stated in our response to Question 28.

Question 30: Should we require the registrant to disclose any material conflicts of interest that could reasonably affect the judgment or decision making of the qualified person, such as material ongoing business relationships between the registrant and the qualified person or the qualified person's employer?

Response: We believe that any material conflict of interest should be viewed as interfering with the qualified person's judgment regarding the preparation of the technical summary report and, therefore, should preclude the qualified person from preparing the technical summary report. The same would hold true for an external "independent" qualified person doing a review of the reserves prepared by an internal qualified person(s) as discussed in Question 29. A material conflict of interest would preclude the external qualified person from doing the review work. Thus, if qualified persons with material conflicts of interest were not allowed to prepare or review the technical summary report, no disclosure of the material conflict of interest would be necessary. However, if the staff allows preparation or review of the technical summary report by a qualified person with a material conflict of interest and the staff requires the disclosure of the qualified person preparing or reviewing the technical summary report, we believe such material conflict of interest would be relevant to an investor and should be disclosed. We believe this disclosure would be consistent with current guidance to disclose the relationship of the qualified person with the registrant.

Question 31: Would the proposed technical report summary filing requirement impose a significant burden on registrants? If so, which registrants and why? Are there changes that we could make to this proposed requirement to alleviate any such burden?

Response: The technical report requirement would impose a significant burden to registrants. Registrants should not be required to produce exploration and development stage technical reports, especially issuers with proven operating expertise. These reports may be more useful for startup

companies to raise capital compared to established operating entities. If the information required is not limited to a summary level, it would impose a significant burden on registrants. The evaluations of coal operations require an immense amount of data and planning and might include a large number of reports. Further, these reports almost always contain confidential information.

Question 32: Should we define a qualified person in part to be a mineral industry professional with at least five years of relevant experience in the type of mineralization, as described here and in the proposed rule, and type of deposit under consideration and in the specific type of activity that person is undertaking on behalf of the registrant, as proposed? Why or why not? Should we specify the particular type of professional, such as a geologist, geoscientist or engineer, required under the definition? The years of experience required under the proposed definition is consistent with the CRIRSCO-based codes. Is five years the appropriate number of years to constitute the minimum amount of relevant experience required under the definition in our rules? Should we require a lesser or greater number of years of relevant experience (e.g., 3, 7, or 10 years)?

Response: We believe a qualified person should be a professional in the mineral industry with a minimum of five years of experience. Restrictions on relevant experience should be limited. Qualified persons should be within a group of professionals who regularly work in the minerals industry including geologists, engineers and geoscientists. In our industry, there is often considerable overlap in the tasks performed by these various professionals.

Question 33: Should we define a qualified person to be an individual, as proposed? Or should we expand the definition, in cases where the registrant engages an outside expert, to include legal entities, such as an engineering firm licensed by a board authorized by U.S. federal, state or foreign statute to regulate professionals in mining, geosciences or related fields? Why or why not? If we expand the definition in this manner, should the firm or the responsible individual sign the technical report summary and provide the required written consent? Similarly, what professional experience should be required and how would a firm satisfy the professional experience requirement? Should we adopt qualified person requirements for firms that are different than the proposed requirements for individual qualified persons? If so, what should these requirements be?

Response: We believe that, if a firm can meet all the qualifications required under the definition of a qualified person and has quality control processes recognized by professional boards or state regulatory agencies in place, the firm should be allowed to meet the definition of a qualified person.

Question 34: Do the proposed instructions provide the appropriate guidance for what may constitute the requisite relevant experience in the particular activity involved and in the particular type of mineralization and deposit under consideration? Is there different or additional guidance that we should provide in this regard?

Response: We believe that a professional with the initial five years of experience would be able to transition from one mineral type to another and that the proposed limitation on moving between mineral types is too restrictive.

Question 35: Should we define a qualified person in part to be an eligible member or licensee in good standing of a recognized professional organization at the time the technical report is prepared, as proposed? Why or why not? Should we require an organization to meet the six criteria specified in the proposed definition in order to be a recognized professional organization, as proposed? Should the definition of a qualified person take into account whether, and the extent to which, a person has been disciplined by their professional organization? If so, how? Should the definition specify that the organization must require,

rather than require or encourage, continuing professional development? Are there different or additional criteria that we should require for an organization to be a recognized professional organization?

> **Response:** We believe that all qualified persons should be eligible members of a professional organization and/or licensees with state regulatory agencies in good standing. We support the Commission's six criteria as outlined in the proposal to define a professional organization and believe it covers the vast majority of professional organizations recognized within the mining industry as reputable. We believe the definition of a qualified person should take into account whether, and to the extent to which, a person has been disciplined by a professional organization.

Question 36: What factors should we consider in determining whether a professional association is recognized as reputable with regards to the definition of a recognized professional organization? Are the examples we provided appropriate factors for determining whether a professional association is recognized as reputable or are other factors more appropriate? Should any of these factors be incorporated into the final rules?

> **Response:** We believe that there are numerous accredited and reputable professional organizations and state agencies that certify professionals. These organizations are widely recognized in the mining industry and meet the criteria outlined in the proposal. Therefore, we believe the proposed additional factors are unnecessary.

Question 37: Instead of the proposed flexible approach, should we require that a qualified person be a member of an approved organization listed in an appendix to the mining disclosure rules or in a document posted on the Commission's website? If so, how should the Commission determine which organizations to approve and how frequently should the Commission update the approved organization list?

> **Response:** We fully support the Commission's proposed flexible approach rather than the Commission maintaining and publishing a list of approved organizations.

Question 38: Should we, as proposed, require a registrant to disclose the recognized professional organization(s) that the qualified person is a member of, and confirm that the qualified person is a member in good standing of the organization(s)?

> **Response:** We believe that if a registrant has verified that the qualified person is a member of a recognized professional organization or certified by a state agency, there is little benefit to the investor to know this specific information. If the Commission retains its requirement to file a technical summary report it would be appropriate for the qualified person to include their membership or certification in that report. If the Commission does not retain its requirement to file a technical summary report, the report provided to the registrant from the internal or external qualified person(s) should still include references to the professional organization they are a member of and confirm their good standing.

Question 39: Are there different or additional conditions that a person should have to satisfy in order to meet the definition of qualified person? For example, should we require that a person have attained a particular level of formal education (bachelor's degree, master's degree, or doctorate) in order to be a qualified person? If so, what level of education would be appropriate? Would such a minimum education requirement disqualify a significant percentage of persons from being considered as qualified persons who otherwise possess the requisite relevant experience?

Response: We believe that a bachelor's degree should be required, but not any other degree. It is unlikely that such a requirement would exclude a significant percentage of persons who are qualified to perform the work required.

Question 40: Is the definition of qualified person too restrictive, thus increasing the cost and difficulty associated with finding a qualified person? Alternatively, should the definition be more restrictive, to help ensure a qualified person has an appropriate level of training and expertise? In either case, why?

Response: We believe the proposed definition for a qualified person is too restrictive because of the proposed limitation on moving between mineral types.

Question 41: Instead of prescribing qualifications for the qualified person, should we instead require a registrant to provide detailed disclosure regarding the qualifications of the individual who prepared the technical report summary? Why or why not?

Response: We believe that the majority of reserve estimate reports prepared for the coal industry meet all the qualifications outlined in the proposal to define a qualified person; however, as discussed in Question 26, we do not believe the Commission should require detailed disclosure of an individual's qualifications because the burden to the registrant outweighs any benefit to an investor in knowing this level of detail. We believe the proposed definition of a qualified person is reasonable with the exception of the concern we outlined in response to Question 40.

Question 42: Should we require a registrant to disclose material exploration results for each of its material properties, as proposed? Why or why not? Alternatively, should we permit registrants to provide exploration results in a summary form?

Response: A registrant should not be required to disclose material exploration results. Disclosure of exploration results would put a registrant at a competitive disadvantage by revealing information that would permit competitors to obtain insight on the registrant's business practices and expenditures and would almost certainly interfere with the registrant's acquisition of critical mineral properties. Other companies could exploit the information disclosed to make their own valuations and attempt to interfere with the registrant's attempt to secure mining rights.

Question 43: Should we define exploration results as data and information generated by mineral exploration programs (i.e., programs consisting of sampling, drilling, trenching, analytical testing, assaying, and other similar activities undertaken to locate, investigate, define or delineate a mineral prospect or mineral deposit) that do not form part of a disclosure of mineral resources or reserves, as proposed? Why or why not? Are there other characteristics that we should include in the definition of exploration results? Are there other activities that we should include as examples of mineral exploration programs? Are there activities that we should exclude as examples of mineral exploration programs?

Response: See our response to Question 42. For coal deposits this involves an immense amount of data as well as confidential information.

Question 44: What are the risks that could result from requiring disclosure of material exploration results? Should we prohibit the use of exploration results to derive estimates of tonnage, grade, and production rates, or in an assessment of economic viability, as proposed? Why or why not? Would prohibiting the use of exploration results for these purposes, as proposed, adequately protect investors from the increased risk associated with including information having a lower level of certainty about the economic value of mining properties?

Response: The proposed rules address the limitation of exploration results to derive tonnage, grade, or other quantitative estimates. We agree that the disclosure of exploration results may be useful to attract investors, but disclosure of the actual results in the manner proposed is very likely to mislead investors into thinking that a property is more economically viable than it may actually be given the low level of certainty of exploration results. We further believe that publishing this exploratory technical information could suggest credibility to the mineral property that may not be warranted. Most investors do not have the technical expertise, or financial ability to engage someone with the necessary expertise, to properly analyze such information. Please also see our comments on Question 42.

Question 45: When determining whether exploration results are material, should a registrant consider their importance in assessing the value of a material property or in deciding whether to develop the property, as proposed? Why or why not? Are there other circumstances that would better define when exploration results are material? If so, what are those circumstances?

Response: A registrant should not have to disclose material exploration results for each of its material properties for coal mining operations. In addition to the reasons presented earlier in response to Questions 42 through 45, disclosure of exploration results would include an immense amount of confidential and proprietary data representing a large financial investment by the registrant. We estimate the cost of exploration to be several million dollars per material mining operation. Making such confidential and proprietary data available to the public would provide free access to our competitors to information that we incurred significant costs and efforts to obtain and prepare.

Question 46: We are proposing to require the disclosure of material exploration results for each material property. Should we also require disclosure of material exploration results when the registrant has determined that it has in the aggregate material mining operations but no individual properties are material? Would disclosure of material exploration results for its properties in the aggregate (when none is individually material) provide additional meaningful disclosure for investors? If so, how should a registrant disclose such exploration results? Should it provide such results in summary form? Or should it provide detailed disclosure about all material exploration results for all of its properties?

Response: As stated in our response to Question 45, we do not believe a registrant should be required to disclose material exploration results for each of its material properties, whether aggregated or as single properties, for coal mining operations.

Question 47: Should we require a registrant with material mining operations to disclose mineral resources in addition to mineral reserves, as proposed? Why or why not?

Response: A registrant should not be required to disclose mineral resource information. As defined, resources are marginally economic and reporting would only confuse investors with limited knowledge of the mining industry into believing that a mining operation has a larger number of future saleable tons than would likely be the case. However, we believe the registrant should have the option and be encouraged to briefly discuss any mineral resource information if desired with a clear general explanation given as to why the mineral resources are not considered proved or probable reserves.

Question 48: What are the risks that could result from requiring a registrant with material mining operations to disclose its mineral resources? How could the Commission mitigate those risks?

Response: In addition to the risks outlined in our response to Question 47, we believe that simply disclosing mineral resources may suggest that those resources are more credible than actually is the case. For reasons similar to our objection to a mandatory requirement to disclose exploration results, we believe most investors do not have the technical expertise to properly evaluate such mineral resource disclosures.

Question 49: Under the proposed rules, a registrant with material mining operations could choose not to engage a qualified person to determine whether a mineral deposit is a mineral resource, with the result that the registrant would not be required to disclose mineral resources that may exist. Should the rules, as proposed, preclude a registrant from disclosing mineral resources in an SEC filing if it has elected not to engage a qualified person to make the resource determination? Alternatively, should the rules permit a registrant to disclose mineral resources in an SEC filing, despite not having engaged a qualified person to make the resource determination, in certain instances? If so, in what instances would it be appropriate to permit such disclosure?

Response: We do not believe that mineral resource disclosures should be mandatory for registrants so we are supportive of the rules allowing optionality to the disclosures for the reasons outlined in our previous responses.

Question 50: Should we define the term "mineral resource," as proposed? Why or why not? In order for material to be classified as a mineral resource, should there be reasonable prospects for its economic extraction, as proposed? Why or why not?

Response: With respect to the definition of mineral resource, this is already a common practice for the coal industry as outlined in United States Geological Survey Circular 891. We believe that the definition "mineral resources" under the proposed rules should follow this generally accepted definition.

Question 51: Should the definition of mineral resource include mineralization, including dumps and tailings, as proposed? Should the definition of mineral resource also include geothermal fields and mineral brines, as proposed? Why or why not? Is there any other material that should be explicitly included in the definition of mineral resource?

Response: For the coal industry, we see little benefit in including mineralization in the definition of mineral resources as United States Geological Survey Circular 891 is fairly specific on what can be considered a mineral resource. If a mineralization meets those definitions is seems reasonable that they should be included. With respect to geothermal fields and mineral brines, we do not believe these are applicable in the coal industry.

Question 52: Should the definition of mineral resource exclude oil and gas resources as defined in Regulation S-X, 146 gases (e.g., helium and carbon dioxide), and water, as proposed? Why or why not? Is there any other material that should be explicitly excluded from the definition of mineral resource?

Response: As the Commission has separate disclosure rules outlined for oil and gas resources, we do not have an objection to them being excluded from the proposed rule.

Question 53: Should the definition of mineral resource include the requirement that a qualified person estimate or interpret the location, quantity, grade or quality continuity, and other geological characteristics of the mineral resource from specific geological evidence and knowledge, including sampling, as proposed? Why or why not? Are there other geological characteristics that we should explicitly require a qualified person to estimate or interpret when determining the existence of mineral resources?

Response: We do not believe a registrant should be required to disclose mineral resources. We believe it is appropriate to have a qualified person estimate mineral resources.

Question 54: Should we require a registrant to classify its mineral resources into inferred, indicated and measured mineral resources, as proposed? Why or why not? If not, what classifications would be preferable and why?

Response: We do not believe a registrant should be required to disclose mineral resources. Because mineral resources are considered economically marginal and of lower certainty to begin with, dividing them into low, middle, and high level of certainty offers little value. Disclosure of the level of certainty tends to give credibility to the resources as a whole that may not be warranted. With respect to the specific classifications, they are already common practice for the coal industry as outlined in United States Geological Survey Circular 891.

Question 55: Should we define "inferred mineral resource" as proposed? Why or why not? Should we require the disclosure of inferred mineral resources although quantity and grade or quality with respect to those mineral resources can be estimated only on the basis of limited geological evidence and sampling, as proposed? Should we require a qualified person to describe the level of risk associated with an inferred mineral resource based on the minimum percentage that he or she estimates would convert to indicated or measured mineral resources with further exploration, as proposed? Should we permit rather than require a registrant to disclose inferred mineral resources because of the high level of geologic uncertainty associated with that class of mineral resource? Should we prohibit the disclosure of inferred mineral resources for that reason?

Response: We do not believe a registrant should be required to disclose mineral resources. With respect to the definition of inferred mineral resource, this is already a common practice for the coal industry as outlined in United States Geological Survey Circular 891.

Question 56: Should we prohibit the use of inferred mineral resources to make a determination about the economic viability of extraction, and preclude the conversion of an inferred mineral resource into a mineral reserve, as proposed? Would these proposed prohibitions be sufficient to mitigate the added uncertainty that could result from the requirement to disclose inferred mineral resources? Are there circumstances that would justify a qualified person's use of inferred mineral resources to make a determination about the economic viability of extraction, or that would allow the conversion of an inferred mineral resource into a mineral reserve? Should we permit the use of inferred mineral resources to make a determination about the economic viability of extraction as long as the qualified person and registrant disclose the high level of risk associated with such mineral resources? If so, what would be the potential effects on registrants and investors?

Response: We do not believe a registrant should be required to disclose mineral resources. With respect to the prohibition on using inferred mineral resources to make a determination about the economic viability of extraction and the preclusion of the conversion of inferred mineral resources into a mineral reserve, this is already a common prohibition for the coal industry as outlined in United States Geological Survey Circular 891.

Question 57: Should the definition of "inferred mineral resource" provide that such mineral resource has the lowest level of geological confidence of all mineral resources, which prevents the application of the modifying factors in a manner useful for evaluation of economic viability, as proposed? Should we require a registrant, when disclosing inferred resources, to provide a legend or cautionary statement about the

geological uncertainty associated with inferred resources? If so, what should such legend or cautionary statement say and where in the SEC filing should it be disclosed?

> **Response:** We do not believe a registrant should be required to disclose mineral resources. Any definition of "inferred mineral resource" should be the same as the definition in the United States Geological Survey Circular 891.

Question 58: Should we define "indicated mineral resource," as proposed? In particular, should the definition depend on a qualified person's ability to estimate quantity and grade or quality using adequate geological evidence and sampling, as proposed? Should the definition of "adequate geologic evidence" be based on a qualified person's ability to apply modifying factors in sufficient detail to support mine planning and evaluation of the economic viability of the deposit, as proposed? Should we require a qualified person to describe the level of risk associated with indicated mineral resources based on the confidence limits of relative accuracy at a particular confidence level for production estimates for one-year periods, as proposed? Should we, instead, allow the qualified person to provide a qualitative discussion of the uncertainties in place of confidence limits if he or she so chooses? Why or why not?

> **Response:** We do not believe a registrant should be required to disclose mineral resources. Any definition of "indicated mineral resource" should be the same as the definition in the United States Geological Survey Circular 891.

Question 59: Should the definition of "indicated mineral resource" include that such mineral resource has a lower level of confidence than what applies to a measured mineral resource and may only be converted to a probable mineral reserve, as proposed?

> **Response:** We do not believe a registrant should be required to disclose mineral resources. Any definition of "indicated mineral resource" should be the same as the definition in the United States Geological Survey Circular 891.

Question 60: Should we define "measured mineral resource," as proposed? In particular, should the definition depend on a qualified person's ability to estimate quantity and grade or quality on the basis of conclusive geological evidence? Should we base the definition of "conclusive geologic evidence" on a qualified person's ability to apply modifying factors in sufficient detail to support detailed mine planning and final evaluation of the economic viability of the deposit, as proposed? Should we require a qualified person to describe the level of risk associated with measured mineral resources based on the confidence limits of relative accuracy at a particular confidence level for production estimates for periods of less than one year, as proposed? Should we, instead, allow the qualified person to provide a qualitative discussion of the uncertainties in place of confidence limits if he or she so chooses? Why or why not? Are there particular challenges to complying with the proposed requirement to disclose numerical estimates of the level of confidence for each class of mineral resource?

> **Response:** We do not believe a registrant should be required to disclose mineral resources. Any definition of "measured mineral resource" should be the same as the definition in the United States Geological Survey Circular 891.

Question 61: Should the definition of "measured mineral resource" include that such mineral resource has a higher level of confidence than what applies to either an indicated mineral resource or an inferred mineral resource and may be converted to a proven mineral reserve or to a probable mineral reserve, as proposed?

Response: We do not believe a registrant should be required to disclose mineral resources. Any definition of "measured mineral resource" should be the same as the definition in the United States Geological Survey Circular 891.

Question 62: Should we require the disclosure of numerical estimates of the level of confidence associated with each class of mineral resource, as proposed? Why or why not? Should we instead follow the practice in the CRIRSCO-based codes and require only the disclosure of all material assumptions and the factors considered in classifying mineral resources? Why or why not?

Response: We do not believe a registrant should be required to disclose mineral resources. If the Commission should decide to require disclosure of mineral resources, we believe the Commission should consider following the practice of CRIRSCO and only require disclosure of all material assumptions and the factors considered in classifying mineral resources versus detailed disclosure of resource information. Further, any disclosure of resources should be exclusively a quantitative estimate of tonnage with material assumptions.

Question 63: Should we require that a registrant's disclosure of mineral resources be based upon a qualified person's initial assessment, which supports the determination of mineral resources, as proposed? Why or why not? Is there another form of analysis or means of disclosure that would be more appropriate for the determination and disclosure of mineral resources? Would disclosure of the material risks associated with mineral resource determination be an adequate substitute for the initial assessment requirement?

Response: We believe mineral resources should not be based on an initial assessment prepared by a qualified person using assumed unit costs for operations which include pricing, costs, and other cash flow information. For active operations, these items of information are proprietary and confidential. Requiring their disclosure would provide competitors with unfair advantages, and would allow our customers to better understand our costs and, ultimately, profits, thereby impairing our ability to generate revenues.

Question 64: If we require an initial assessment to support the determination of mineral resources, should we define "initial assessment," as proposed, to require the consideration of applicable modifying factors and relevant operational factors for the purpose of determining (at the resource evaluation stage) whether there are reasonable prospects for economic extraction? Should we instead only require consideration of modifying and operational factors at the reserve determination stage?

Response: See our response to Question 63.

Question 65: Should we require an initial assessment to include cut-off grade estimation, as proposed? Why or why not?

Response: See our response to Question 63.

Question 66: Should we require a qualified person to base cut-off grade estimation on assumed unit costs for surface or underground operations, as proposed? Is it appropriate to allow the qualified person to make an assumption about unit costs, as proposed, or should we require a more detailed estimate of unit costs at the resource determination stage? Is it appropriate to require the qualified person to disclose whether the unit cost estimates are for surface or underground operations, as proposed?

Response: See our response to Question 63.

Question 67: Should we also require a qualified person to base cut-off grade estimation on estimated mineral prices, as proposed? In this regard, should we require the qualified person to use a commodity price that is no higher than the average spot price during the 24-month period prior to the end of the last fiscal year, determined as an unweighted arithmetic average of the daily closing price for each trading day within such period, unless prices are defined by contractual arrangements, as proposed? Does a ceiling model based on historical prices best meet the goals of transparency, cost efficiency and comparability? Why or why not? Is there another model that would better meet these goals? If another price model better meets these goals, what should be the basis of estimated mineral prices for purposes of the initial assessment? Whatever price model we adopt, should it be used to determine the commodity price itself? Or should it be used, as proposed, to determine the ceiling of the commodity prices?

Response: The price ranges for various types of coal may fluctuate widely in a relatively short period of time depending on quality and location. While we understand the Commission's desire to make the determination of resources and reserves uniform across commodities, coal, in particular, does not have a single market on which registrants can rely, resulting in a lack of comparability between registrants with respect to pricing. Because of this lack of comparability and the fluctuations in coal prices between registrants, a 24-month price ceiling would not provide meaningful information about a registrant's reserves to investors and, in fact, would most likely be misleading. We propose that registrants use forward price curves developed through use of industry specific curves and actual experience, as well as qualitative assessments, to determine the economic viability of mineral resources and reserves. We believe that, while there is a subjective element to the qualitative assessment, utilization of these methods in determining the economic viability of mineral resources and reserves is much more accurate and would result in more meaningful, and less potentially misleading, information being provided to investors.

Question 68: Is the proposed 24-month period the most appropriate period for the estimated price requirement? Would a 12, 18, 30, or 36-month period, or some other duration, be more appropriate? Should the 24-month period, or other period be fixed and apply to all registrants, or should the period vary depending upon the type of commodity being mined and other factors?

Response: See our response to Question 67.

Question 69: Should we require, as proposed, the same ceiling price for mineral resource and reserve estimation? If not, how should the prices used for mineral resource and reserve estimation differ? Would such criteria meet the goals of transparency, cost efficiency and comparability?

Response: See our response to Question 67.

Question 70: Should we require that for purposes of the initial assessment a qualified person must provide at least a qualitative assessment of all relevant modifying factors to establish economic potential and justify why he or she believes that all issues can be resolved with further exploration and analysis, as proposed? Are the modifying factors provided as examples in the proposed instruction and table the most appropriate factors to be included? Are there other factors that should be specified in the instruction and table in lieu of or in addition to the mentioned factors? Would presentation of the modifying factors in a table benefit investors, registrants and qualified persons?

Response: As previously stated, we believe mineral resources should not be based on an initial assessment prepared by a qualified person using assumed unit costs for operations which include pricing, costs, and other cash flow information. A qualitative assessment is more feasible and less likely to mislead investors.

Question 71: Should we permit the qualified person to make assumptions about the modifying factors set forth in the proposed table at the resource determination stage, as proposed? Why or why not? Are there other assumptions that we should specify in lieu of or in addition to those already mentioned in the proposed table?

Response: See our response to Question 70.

Question 72: Should we permit a qualified person to include cash flow analysis in an initial assessment to demonstrate economic potential, as proposed? Why or why not? If we should permit cash flow analysis in an initial assessment, should we require that operating and capital cost estimates in the analysis have an accuracy level of at least ±50% and a contingency level of ≤25%, as proposed? If not, what should the accuracy and contingency levels be? Should we require the qualified person to state the accuracy and contingency levels in the initial assessment?

Response: We strongly believe there should be no requirement to use a discounted cash flow analysis to establish the economic viability of mineral resources. We believe the submittal of specific discounted cash flow information may give competitors information that they can use to a registrant's detriment. For example, competitors could use the information to place bids below the disclosed prices. Utilities could use the information to justify squeezing the margin a registrant makes between the costs and contract price. Suppliers could use the information to justify charging the registrant a higher rate. Capital disclosures could benefit competitors/vendors as well. Mineral owners could use the information to extract a higher royalty rates from the registrant. Competitors or other individuals could use mineral property information to interfere with a registrant's operations.

Question 73: If we permit cash flow analysis in the initial assessment, should we prohibit the qualified person from using inferred mineral resources in the cash flow analysis, as proposed? Why or why not? Would there be disadvantages to registrants or investors if the use of inferred mineral resources in an initial assessment's cash flow analysis is prohibited? Would there be advantages to prohibiting the use of inferred resources in an initial assessment's cash flow analysis in the initial assessment?

Response: See our response to Question 72.

Question 74: Should we prohibit the use of an initial assessment to support a determination of mineral reserves, as proposed? Why or why not?

Response: We believe mineral reserves should not be based on an initial assessment prepared by a qualified person using assumed unit costs for operations which include pricing, costs, and other cash flow information. For active operations, these items of information are proprietary and confidential. Requiring their disclosure would provide competitors with unfair advantages, and would allow our customers to gain insight into confidential elements of our costs and, ultimately, profits, thereby impairing our ability to generate revenues.

Question 75: Are we correct in thinking that use of Circulars 831 and 891 to classify mineral resources would not be appropriate under the proposed rules? Why or why not?

Response: We believe that the use of Circulars 831 and 891 to classify mineral resources is appropriate for coal. Coal is a tabular deposit that is often relatively consistent over large areas and thus lends itself to this type of evaluation. By its nature, if it were not tabular, it could not be economically mined. The use of Circular 891 has provided a readily reproducible method for estimating tonnage and quality that can be quickly and easily evaluated. In addition, if an area is

encountered in which geological certainty is suspect, the distances of the reserve or resource body typically used can be shortened, provided that an explanation is included in the evaluation. A very large number of qualified persons are available to perform this work.

Question 76: Should we establish a framework for mineral reserves determination and disclosure, as proposed? Why or why not? Is there another framework that would be preferable to the proposed framework? If so, what would be the advantages and disadvantages of the alternative framework?

Response: The framework for mineral reserves determination as outlined in Circulars 831 and 891 is appropriate for coal and a new framework for coal is not necessary. See our response to Question 75.

Question 77: Should we define "mineral reserve," as proposed? Are there conditions that we should include in the definition of mineral reserves instead of, or in addition to, those proposed to be included in the definition? Are there any conditions that we should exclude from the definition of mineral reserves? For example, should we modify the condition that mineral reserves be based on a pre-feasibility or feasibility study to only permit a feasibility study? Should we exclude in its entirety the condition that mineral reserves be based on a feasibility or pre-feasibility study? Are there terms that we should define differently? For example, should we define a mineral reserve as an estimate of tonnage and grade or quality that includes diluting materials and allowances for losses, instead of a net estimate, as proposed? Why or why not?

Response: For the coal industry, the condition that mineral reserves be based on a pre-feasibility or feasibility study should be excluded in its entirety. For coal companies operating in well-defined coal fields, these types of formal studies are not typically conducted, as on-going operations provide all the feasibility information that is required. We estimate the cost of compliance to prepare such unnecessary feasibility studies from scratch or update previous studies for all our material mining operations could cost several hundreds of thousands to millions of dollars depending the supporting information available to us and provide no benefit to us or investors as all of our mining operations are active operations. Furthermore, if we were to identify a potential new mining operation, we may not necessarily need an initial assessment, pre-feasibility study or feasibility study to allow us to make informed decisions. Mining competitors could use the information to place bids below the disclosed pricing. Utilities could use the information to justify squeezing the margin a registrant makes between the costs and contract price. Suppliers could use the information to justify charging the registrant a higher rate. Capital disclosures could benefit competitors/vendors as well. Mineral owners could use the information to extract a higher royalty rates from the registrant. Competitors or other individuals could use mineral property information to interfere with the registrant's operations. These additional disclosures would clearly harm investors by putting the registrant at a huge competitive disadvantage, particularly relative to private coal mining companies.

Question 78: Should we explicitly include a life of mine plan disclosure requirement in the technical studies required to support a determination of mineral reserves, as proposed? Why or why not?

Response: We strongly believe that a life of mine plan should not be included in disclosure requirements. Mine plans often include areas not yet controlled by the company. Reserves currently reported to the Commission do not include uncontrolled reserves. For the coal industry, disclosing mine life plans would allow competitors or individuals to interfere with operations by acquiring strategic mineral rights already targeted by the registrant. This interference could also raise the costs used in determining whether the mining operation was expected to be economically viable, which in turn would negatively impact the registrant's future profitability by lowering expected margins or even rendering the entire operation uneconomic. Further, the Commission

should exclude life of mine plans because they are always subject to change, depending upon the market and physical conditions encountered, and could lead potential investors to believe that mining is possible under all conditions, the mine plans are also subject to change and could be outdated by the time they are disclosed.

Question 79: Should we require the use of a discounted cash flow analysis or other similar analysis to establish the economic viability of a mineral reserve's extraction, as proposed? Why or why not? If so, should we require the use of a price that is no higher than a trailing 24 month average spot price in the discounted cash flow analysis, except in cases where sales prices are determined by contractual agreements, as proposed? Is there some other period (e.g., 12 or 36 months) or measure that should determine the price used in the discounted cash flow analysis?

Response: We believe there should be no requirement to use a discounted cash flow analysis to establish the economic viability of reserves. While a cash flow analysis is one quantitative measure to determine the economic viability of reserves, there are other qualitative factors that are often used by active mining operations to determine economic viability. With respect to the 24-month period as defined in the proposal as a maximum commodity price ceiling for mineral reserves estimation, we note that a commodity such as coal can have a varied price range that may fluctuate widely in a relatively short period of time depending on quality and location. While we understand the Commission's desire to make the determination of resources and reserves uniform across commodities, coal, in particular, does not have a single market on which registrants can rely, resulting in a lack of comparability between registrants with respect to pricing. Because of this lack of comparability and the fluctuations in coal prices between registrants, we do not believe the 24-month price ceiling would provide meaningful information about a registrant's reserves to investors and is likely to be misleading. We would alternatively propose that registrants use forward price curves developed through use of industry specific curves and actual experience, as well as qualitative assessments, to determine the economic viability of mineral resources and reserves. We believe that, while there is a subjective element to the qualitative assessment, utilization of these methods in determining the economic viability of mineral resources and reserves would result in more meaningful, and less potentially misleading, information being provided to investors.

Question 80: Should we allow registrants to use an alternate price in addition to a price that is no higher than a trailing 24 month average spot price, as long as they disclose the alternate price and their justification? Alternatively, should we require every registrant to use a fixed 24 month trailing average price with the option to use an alternate price(s) that is reasonably achieved? Are there other pricing methods (e.g., management's long term view or using spot, forward or futures prices at the end of the last fiscal year to determine the ceiling price allowed) that we should require or permit registrants to use in discounted cash flow analysis? Would such pricing methods be transparent, easy for registrants to apply and investors to understand, and to the extent practicable, provide some degree of comparability?

Response: See our response to Question 79.

Question 81: Should we define the terms "probable mineral reserve" and "proven mineral resource," as proposed? Why or why not? If not, how should we modify these definitions?

Response: The terms "measured" and "indicated" have worked for many decades for the coal industry and should be allowed to stand unmodified. We would not object to the use of the terms "proven" and "probable" having the substantially same meaning as proposed.

Question 82: Should we define "modifying factors," as proposed? Are there any factors that we should include in the definition of modifying factors instead of or in addition to those already included in the definition? Are there any factors that we should exclude from the definition?

> **Response:** We believe that the modifying factors identified in the proposed rule are consistent with current practice and the same as defined in Circulars 831 and 891 as well as the CRIRSCO framework.

Question 83: Should we adopt the above discussed instructions, as proposed? Why or why not?

> **Response:** We have a number of concerns with the instructions as outlined in our previous responses. Specifically, we oppose the requirement to: (1) base reserves on a pre-feasibility or feasibility study, (2) include life of mine plans, (3) the requirement to use a discounted cash flow analysis to determine economic viability, and (4) the use of a 24-month price ceiling in the use of a discounted cash flow analysis.

Question 84: Should we define "preliminary feasibility study" and "feasibility study," as proposed? Are there any terms and conditions that we should include instead of or in addition to those included in the proposed definitions? Are there any terms or conditions under each definition that we should exclude?

> **Response:** We do not object to the definitions of "preliminary feasibility study" and feasibility study" as defined in the proposal but as discussed above, however, we do not believe the studies should be required as a basis for the reserve determination and we strongly believe that the proposed rules should not require disclosure of such studies.

Question 85: Should we permit the use of either a pre-feasibility study or a feasibility study to support the determination and disclosure of mineral reserves, as proposed? Why or why not?

> **Response:** For the coal industry, many times a pre-feasibility or feasibility study is unnecessary as ongoing operations generally provide all the feasibility information that is required to support the reserve assessment. A registrant should be permitted to use either a pre-feasibility or feasibility study to support the disclosure of mineral reserves, however, a reserve estimate should also be allowed to support disclosed reserves.

Question 86: Should we require qualified persons to use a feasibility study in situations where the risk is high, as proposed? Why or why not? Are there other conditions, in addition to or in lieu of high risk situations, where we should require a feasibility study in support of mineral reserve disclosure?

> **Response:** We believe that where the risk is higher, such as a new mining operation, no ongoing active mining operations, or a new prospect that is unfamiliar to the registrant, that a higher level of detailed analysis should be obtained to support the reserve estimates prior to them being disclosed. However, we do not believe this necessarily needs to be a feasibility study. Further, we do not believe the pre-feasibility studies, feasibility studies, or detailed reserve estimate reports should be disclosed as exhibits to public filings.

Question 87: Should we adopt the proposed instructions about the use of a pre-feasibility study to support the determination and disclosure of mineral reserves? Are there any instructions that we should provide instead of or in addition to the proposed instructions for such use of a pre-feasibility study? Are there any instructions that we should exclude? Would the proposed instructions mitigate the risk of less certain disclosure that could result from the use of a pre-feasibility study to support the determination and disclosure of mineral reserves? If not, why not?

Response: For the coal industry, the condition that mineral reserves be based on a pre-feasibility or feasibility study should be excluded in its entirety. For coal companies operating in well-defined coal fields, these types of formal studies are not typically conducted, as on-going operations provide all the feasibility information that is required. We estimate the cost of compliance to prepare feasibility studies for all our material mining operations could cost several million dollars and provide us no benefit as all of our material mining operations are active operations. Furthermore, if we were to identify a potential new mining operation, we may not necessarily need an initial assessment, pre-feasibility study or feasibility study to allow us to make informed decisions.

Question 88: Should we adopt the proposed instructions for the use of a feasibility study to support the determination and disclosure of mineral reserves? Are there any instructions that we should provide instead of or in addition to the proposed instructions for such use of a feasibility study? Are there any instructions that we should exclude?

Response: See our response to Question 87.

Question 89: As part of the instructions for pre-feasibility and feasibility studies, should we define preliminary and final market studies as proposed?

Response: We believe that the instructions refer to these studies as being required for products that are not traded on an active market, exchange or have no sales contract. It is our belief that a registrant would have some level of market analysis to support the capital investment they would be expected to make to mine the commodity and it would not be unreasonable to for the Commission to define these terms. However, we do not believe that the Commission should require public disclosure of such information because it would reveal confidential information of the registrant.

Question 90: Should we require summary disclosure, as proposed, for all registrants with material mining operations? Why or why not? Should such summary disclosure require maps showing the locations of all mining properties, a presentation of the proposed information about the 20 properties with the largest asset values, and a summary of all mineral resources and reserves at the end of the most recently completed fiscal year, as proposed?

Response: We believe that the summary disclosures proposed are consistent with current guidance and are appropriate. We would refer the Commission to our comments on material mining operations at the beginning of this Appendix. We believe these disclosures should be made for all material mining properties as we have proposed. We believe that limiting disclosure to the top 20 properties with the largest asset values may not necessarily align with a registrant's reportable segment presentation and thereby cause the information presented to investors to be inconsistent and potentially misleading.

Question 91: Should we permit registrants to treat multiple mines with interrelated mining operations as one mining property, as proposed? Should we instead require registrants to treat such mines as separate properties? Why or why not?

Response: We support a reserve-level definition of property as opposed to a tract-level definition of property.

Question 92: Should we exclude registrants with only one mining property from the summary disclosure requirements, as proposed? Why or why not? Alternatively, should we use a different threshold than the

proposed "only one" threshold for excluding a registrant from the summary disclosure requirements? If so, what threshold should we use and why would this threshold be more appropriate?

> **Response:** We believe that if a registrant has a material mining operation it should be subject to the same property disclosure rules as other registrants with material mining operations to provide consistent information and presentation to investors.

Question 93: Regarding the proposed summary disclosure requirement for the 20 largest properties, should we require other information, in addition to or in lieu of the proposed items? Why or why not? For example, should we require the registrant to disclose the asset value of each property included in its summary disclosure? Should we revise the proposed form and content of Table 2? If so, how should we revise the table's form or content?

> **Response:** We believe that for the coal industry, the disclosures proposed are consistent with current practices and provide investors with sufficient information about a registrant's mining operations to make informed decisions. We do not believe that additional information should be required as we do not believe that it would enhance the investor's understanding of the mining operations. Disclosure of the asset value could also be confusing depending on how the value is derived. The financial statements record the asset value at cost or at fair value on the date of acquisition, but these values are not subsequently marked to fair value. Disclosing these amounts would not give an investor relevant current information and could be misleading. To require a fair value disclosure of the asset value would create differences between the amounts disclosed in the property disclosures and the amount in the financial statements, which could also cause confusion.

Question 94: Should the presentation of information about the mining properties with the largest asset values include the 20 largest properties, as proposed? Should this number be higher or lower? If so, what number is appropriate? Why? Should the summary disclosure include only those properties that represent 5% or more in asset value? Should we permit the summary disclosure to omit any property that represents 1% or less in asset value? Alternatively, should we require the specified information based on some criteria (e.g. revenues) other than asset value?

> **Response:** We believe that the summary property disclosures should be provided for all material mining operations as defined based on our comments at the beginning of this Appendix.

Question 95: Should we require summary disclosure to include information on mineral resources and reserves, as proposed? Why or why not? If mineral resources and reserves are required in summary disclosure, should we require their disclosure by class of mineral reserves (probable and proven) and resources (inferred, indicated and measured), together with total mineral reserves and total measured and indicated mineral resources, as proposed? Should we require the summary disclosure by commodity and geographic area or property containing 10% or more of mineral reserves or sum of measured and indicated mineral resources, as proposed? Why or why not? In particular, is the proposed instruction to Table 3 regarding the scope of geographic area to be disclosed sufficiently clear, and if not, how should it be clarified? Should we require disclosure of mineral reserves and resources by some other attribute (e.g., segments), in addition to or in lieu of commodity and geographic area? If so, which attributes should we use and why? Should we revise the proposed form and content of Table 3? If so, how should we revise the table's form or content?

> **Response:** We do support the disclosure of mineral resources as previously discussed in our comments to the Commission but not as a required disclosure and with significantly reduced information as compared to probable and proven reserves. We believe disclosure of probable and

proven reserves is consistent with current practice and does provide meaningful information to investors.

Question 96: Should we require the disclosure in Tables 2 and 3 to be made available in the eXtensible Business Reporting Language (XBRL) format? Why or why not?

Response: We do not believe that requiring the proposed disclosures to be made available in XBRL would provide meaningful information to investors as we do not believe that the proposed information is comparable across all registrants or industries. We also do not believe there is a need for structured data as it relates to the proposed property disclosures given the small number of comparable registrants in the mining industry. XBRL is also an expensive and time-consuming process in an already short timeframe to generate a registrant's Form 10-K.

Question 97: If we require the disclosure in Tables 2 and 3 to be made available in XBRL, are the current requirements for the format and elements of the tables suitable for tagging? If not, how should they be revised? In particular, are the proposed instructions for Tables 2 and 3 sufficiently specific to make the data reported in the tables suitable for direct comparative analysis? If not, how should the instructions be revised to increase the usefulness of having the data made available in XBRL, including the comparability and quality of XBRL data?

Response: See our response to Question 96.

Question 98: If we require Tables 2 and 3 to be made available in XBRL, is there a particular existing taxonomy that should be used? Alternatively, what features should a suitable taxonomy have in this case?

Response: See our response to Question 96.

Question 99: Should we require disclosure on individually material properties, as proposed? Why or why not? Should such disclosure require a description of the property, a history of previous operations, a description of the condition and status of the property, a description of any significant encumbrances to the property, a summary of the exploration activity for the most recently completed fiscal year, a summary of material exploration results for the most recently completed fiscal year, and a summary of all mineral resources and reserves, if mineral resources or reserves have been determined, as proposed?

Response: We have serious concerns with the requirement to provide a detailed listing of leases and related information, including expiration dates and royalty rates. It is not uncommon for an individual tract to be owned by a dozen or more people, each of whom may have a separate lease or option that may contain terms different from his or her co-owners – and sometimes such tracts have 50 or 100 owners and a corresponding number of leases or options. Disclosure would result in the production of thousands of pages of data about individual properties and require the registrant to disclose confidential information. We believe that the extent and nature of these disclosures will not help investors to make more informed decisions; rather, investors will be intimidated by the sheer volume of data, and the underlying information, which consists of extensive tract-level detail, will be of no use to individual investors in evaluating whether to invest in a particular registrant. It is difficult to see how the required level of granularity for an individual tract that is but a small part of an exponentially larger mining operation (which, in our case, is also but one of several mining operations) translates into meaningful information for investors.

In addition, it will be literally impossible to comply with all of the disclosure requirements. For example, most of our leases do not have a set expiration date, but instead expire upon "exhaustion of the coal" or grant us the right to fully or partially release them when it makes sense to do so from

an operational perspective, and yet the proposed rules would require us to include expiration dates for all such leases.

We also have concerns with the proposed requirement to disclose how mineral rights were obtained, including any conditions that the registrant must meet in order to retain the property. It is unclear exactly what kind of information and how much information would be required. This requirement could be construed as requesting disclosure of title data, which is proprietary information that registrants spend a great deal of money to acquire from attorneys and title companies. We could potentially summarize this information at a higher level, such as by seam, but there would nonetheless be challenges in terms of dealing with slurry vs. non-slurry storage/injection rights, different types of surface rights, post-termination rights, etc. in this higher-level summary.

We have a number of concerns with describing the history of previous operations at certain locations beyond the time the operation was controlled by the registrant. We believe it would be difficult to obtain historical information, and we don't believe it is useful to investors to disclose the history of operations for a property when it was under the control of a party other than the registrant.

The proposed requirement to include significant encumbrances to the property, including current and future permitting rights and associated timelines, permit conditions, and violations and fines would require a significant investment of time, is duplicative in that most of this information is provided to other agencies, and it would be extremely challenging to ensure that the information is both accurate and complete.

We believe that disclosing other significant factors and risks that may affect access, title, or the right or ability to perform work on the property would require divulging proprietary geologic conditions and other sensitive or confidential information, which would have the effect of undermining our operations and requiring changes to our mine plans on a consistent basis.

In addition to being unhelpfully voluminous and unnecessarily detailed, certain information also will be outdated by the time it is produced and viewed by investors because of the myriad of factors that affect title to and/or control of individual tracts and/or our ability to operate upon them as part of a larger mining operation, whether by virtue of our actions (*e.g.*, acquiring new interests, selling interests, dropping leases, or making mine-plan or permitting changes), those of an individual property owner (*e.g.*, selling rights or encumbering existing rights), of geological or market conditions beyond our control, or of the terms of a given lease, option, or other control instrument (*e.g.*, expiration, cancellation, or other termination).

Question 100: Should we require that a registrant provide the property's location, including in maps, accurate within one mile? Why or why not? If not, should we use a standard for degree of accuracy similar to that used in the CRIRSCO-based codes, such as PERC or SAMREC? Why or why not? If not, what level of accuracy should we require?

Response: We believe that the requirement to disclose the location of the property, accurate within one mile, using an easily recognizable coordinate system, complete with maps, with proper engineering detail to portray the location of the property is overly burdensome, not helpful to the investor, and would require dozens of maps for each operation in order for the hundreds of less-than-one-acre tracts to be legible when printed with their Tract ID. Active coal operations often have thousands and even tens of thousands of acres under control by ownership and/or lease. Many of the parcels/tracts are small, some less than an acre. If disclosure is required, which we would not recommend, we believe a description of the property should be generalized. The detailed tract-by-

tract summaries and maps required by the proposed rules do not currently exist. Gathering the necessary information and then preparing the summaries and maps will require a team of individuals dedicated solely to those tasks, which would be costly and burdensome in any industry, but especially taxing in the mining industry, which already is burdened by substantial regulatory oversight and reporting obligations. In addition, providing this level of detailed mapping and property information will put the registrant at a competitive disadvantage with competitors by specifically highlighting those properties within a registrant's mine plan that it does not yet control, providing an obvious opportunity to competitors and "pin-hookers" to acquire these rights for purposes of either disrupting the registrant's operations or extorting exorbitant royalties or acquisition costs which would otherwise have been avoided, leading to an overall reduction in the value of the current investors' holdings.

Question 101: Should we require that a registrant provide in tabular format each of the summaries required for its exploration activity, material explorations results, and mineral resources and reserves, as proposed? Why or why not? Should we require all of the information specified in Tables 4-8 to be in tabular form? Why or why not? Should we revise the proposed form and content of these tables? If so, how should we revise the tables' form or content?

Response: We strongly feel that the vast majority of the disclosures called for in Tables 4-8 should not be required as previously outlined in our comments.

Question 102: Should we permit registrants to disclose estimates of mineral resources and reserves based on different price criteria, which may reasonably be achieved, in lieu of, or in addition to, the price which is no higher than the 24-month trailing average? Why or why not? What factors should we use to determine what may reasonably be achieved? Should we require all registrants to use the 24-month average spot price (or average over a different period) as the commodity price instead of as a ceiling? Why or why not?

Response: As we stated in our response to Question 79, we would propose that registrants use forward price curves developed through use of industry specific curves and actual experience, as well as qualitative assessments, to determine the economic viability of mineral resources and reserves. We believe that, while there is a subjective element to the qualitative assessment, utilization of these methods in determining the economic viability of mineral resources and reserves would result in more meaningful, and less potentially misleading, information being provided to investors. We do not believe that there should be a 24-month maximum commodity price ceiling for mineral reserves estimation, we note that a commodity such as coal can have a varied price range that may fluctuate widely in a relatively short period of time depending on quality and location. While we understand the Commission's desire to make the determination of resources and reserves uniform across commodities, coal, in particular, does not have a single market on which registrants can rely, resulting in a lack of comparability between registrants with respect to pricing. Because of this lack of comparability and the fluctuations in coal prices between registrants, we do not believe having a 24-month price ceiling would provide meaningful information about a registrant's reserves to investors and could be misleading.

Question 103: Should we require the registrant to provide a comparison of the mineral resources and reserves as of the end of the last fiscal year against the mineral resources and reserves as of the end of the preceding fiscal year, with an explanation of any material change between the two, as proposed? Why or why not? Are there items of information that we should include in the comparison instead of or in addition to the proposed items of information? Are there any proposed items of information that we should exclude from the comparison?

Response: We do not support disclosing the changes in reserves regarding our land efforts in Tables 7 and 8. We believe that this information is proprietary and that disclosure of this information can be used by non-registrants, competitors, or other individuals to interfere with a registrant's operations.

Question 104: If the registrant has not previously disclosed material exploration results, mineral reserve or resource estimates in a filing with the Commission or is disclosing material changes to its previously disclosed exploration results, mineral reserve or mineral resource estimates, should we require it to provide a brief discussion of the material assumptions and criteria in the disclosure and cite to any sections of the technical report summary, as proposed? Should we require registrants to file updated summary technical reports to support disclosure of material exploration results, mineral resources or mineral reserves when the registrant is relying on a previously filed technical report summary that is no longer current with respect to all material scientific and technical information, as proposed? Why or why not?

Response: We do not believe that a technical report summary should be included as an exhibit. We also do not believe that registrants should be required to disclose exploration results or mineral resources. A registrant would engage a qualified person to prepare a reserve estimate that would include much of the information being required to be disclosed. While we have strong concerns with many of the property disclosures outlined in the proposal, we note that the disclosures that are being proposed include the same information required to be included in a technical report. We believe that this information is duplicative and does not provide additional meaningful information to investors. With respect to new properties, we believe that if the new property meets the materiality definition we outlined at the beginning of this Appendix, then a registrant should be required to include the same disclosures as other material mining properties which include the material assumptions and criteria used to prepare the technical report.

Question 105: Regarding the proposed requirement to disclose a material change in mineral resources or reserves, should we adopt an instruction that an annual change in total resources or reserves of 10% or more, or a cumulative change in total resources or reserves of 30% or more in absolute terms, excluding production as reported in Tables 7 and 8, is presumed to be material, as proposed? Why or why not? If not, should we remove the materiality presumptions altogether or use different quantitative thresholds from those proposed? If the latter, what alternative thresholds or measure(s) should replace the proposed presumptions of materiality?

Response: We do not support the disclosure of changes in our reserves outside of production as we believe that this information is proprietary and that disclosure of this information can be used by non-registrants, competitors, or other individuals to interfere with a registrant's operations.

Question 106: Should we require the disclosure in Tables 4 through 8 to be made available in the XBRL format? Why or why not?

Response: In addition to strongly believing that the majority of the information in these tables should not be required to be disclosed by registrants, we do not believe that requiring the proposed disclosures to be made available in XBRL would provide meaningful information to investors as we do not believe that the proposed information is comparable across all registrants or industries. We also do not believe there is a need for structured data as it relates to the proposed property disclosures given the small number of comparable registrants in the mining industry. XBRL is also an expensive and time-consuming process in an already short timeframe to generate a registrant's Form 10-K.

Question 107: If we require the disclosure in Tables 4 through 8 to be made available in XBRL, are the current requirements regarding for the format and elements of the tables suitable for tagging? If not, how should they be revised? In particular, are the proposed instructions for Tables 4 through 8 sufficiently specific to make the data reported in the tables suitable for direct comparative analysis? If not, how should the instructions be revised to increase the usefulness of having the data made available in XBRL, including the comparability and quality of XBRL data?

Response: See our response to Question 106.

Question 108: If we require Tables 4 through 8 to be made available in XBRL, is there a particular existing taxonomy that should be used? Alternatively, what features should a suitable taxonomy have in this case?

Response: See our response to Question 106.

Question 109: Should we require the qualified person to include in a technical report summary the 26 items, as proposed? Are there any items of information that we should include instead of or in addition to the proposed 26 sections of the technical report summary? Are there any items of information that we should exclude from the proposed technical report summary?

Response: We strongly believe that technical report summaries should not be included as an exhibit to a registrant's filing, but rather serve as support for disclosures. Should the Commission keep the requirement to attach a technical report summary we have the following comments which are similar to our previously discussed concerns with proposed disclosures within a registrant's filings:

1. Technical report summaries should only include the physical characteristics of the resource/reserve. For coal mining, thickness, quality, location, general geology, depth, and other mineability issues the qualified person deems relevant should be discussed. Detailed information beyond that would lead to a competitive disadvantage for the registrant.
2. Permitting data should be limited to what permits are needed and where they are in the process. Any information beyond this could be misleading. Often, unforeseen regulatory issues are encountered during the permitting process.
3. Disclosures regarding property control should be limited to "controlled" or "uncontrolled" and "owned" vs. "leased". Disclosure beyond this level could require information that in some cases, the registrant is prohibited from disclosing by legal agreements.
4. Due to the competitive bid process for coal, disclosing detailed exploration, geologic, property, and economic information about individual properties would put the registrant at a huge competitive disadvantage with various groups such as competitors, vendors, customers, etc.
5. We believe that requiring the inclusion of hydro-geologic reports, testing and analyses, sample preparation and quality control measures, geotechnical testing and analyses, etc. would be counter to the Commission's stated desire for the technical report summary to not include large amounts of technical or other project data and may contain proprietary information.
6. We have a number of concerns with describing the history of previous operations at certain locations beyond the time the operation was controlled by the registrant. We believe it would be difficult to obtain historical information and we don't believe it is useful to investors to disclose the history of operations for a property when it was under the control of a party other than the registrant.

Question 110: As previously noted, the qualified person would have to apply and evaluate relevant modifying factors to assess prospects of economic extraction or to convert measured and indicated mineral resources to proven or probable mineral reserves. These would include a variety of factors such as economic, legal, and environmental as discussed more fully above. For example, to apply and evaluate legal factors the qualified person must examine the regulatory regime of the host jurisdiction to establish that the registrant can comply (fully and economically) with all laws and regulations (e.g., mining; environmental, including regulations governing water use and impacts, waste management, and biodiversity impacts; reclamation; and permitting regulations) that are relevant to operating a mineral project using existing technology. Should we expand proposed Item 601(b)(96)(iv)(B)(19)(vi) to provide additional specific examples, in addition to those set forth in Items 601(b)(96)(iv)(B)(19)(i)-(iv), of "issues related to environmental, permitting and social or community factors" that the qualified person must include in the technical report summary? For example, should we expressly require that the qualified person include a discussion of other sustainability issues such as how he or she considered issues related to managing greenhouse gas emissions or workforce health, safety and well-being? Are there other items for which it would be appropriate to require the qualified person to include a discussion in the technical report summary? If so, please provide examples and explain why.

> **Response:** We believe that requiring disclosure of issues related to environmental, permitting and social or community factors, such as how the registrant is going to manage greenhouse gases, workforce health, safety and well-being, within the technical report summary could require a qualified person to attempt to estimate amounts or impacts for which they have no expertise. Furthermore, the analysis is necessarily subjective and potentially hypothetical. We do not believe that these factors meaningfully speak to the economic viability of mineral reserves outside of known costs already included in the analysis. We believe that a qualified person should include in the technical report those amounts that can be readily determined based on the professional qualifications of the qualified person.

Question 111: Should we require, as proposed, a qualified person who prepares a technical report summary that reports the results of a preliminary or final feasibility study to provide information for all 26 items? If not, which items should not be required? Should we require, as proposed, a qualified person who prepares a technical report summary that reports the results of an initial assessment to provide, at a minimum, the information specified in paragraphs (iv)(B)(1) through (13) and (iv)(B)(22) through (26) of proposed Item 601(b)(96)?

> **Response:** We do not believe preliminary or final feasibility studies should be included or disclosed as previously discussed. If the Commission retains the requirement to disclose the results we have the same concerns regarding technical reports as outlined in our response to Question 109.

Question 112: The proposed rules would permit a qualified person who prepares a technical report summary that reports the results of an initial assessment to use mineral resources in economic analysis (and provide the information specified in paragraph (iv)(B)(21) of proposed Item 601(b)(96)). Should we permit a qualified person to do so if he or she wishes?

> **Response:** We do not believe initial assessments should be included or disclosed as previously discussed. If the Commission retains the requirement to disclose the results we have the same concerns regarding technical reports as outlined in our response to Question 109.

Question 113: Should we require a qualified person who prepares a technical report summary that reports material exploration results to provide, at least, the information specified in paragraphs (iv)(B)(1) through (11) and (iv)(B)(22) through (26) of proposed Item 601(b)(96), as proposed?

Response: We do not believe exploration results should be included or disclosed as previously discussed. If the Commission retains the requirement to disclose the results we have the same concerns regarding technical reports as outlined in our response to Question 109.

Question 114: Should we preclude a qualified person from disclaiming responsibility if he or she relies on a report, opinion, or statement of another expert who is not a qualified person in preparing the technical report summary, as proposed? Why or why not?

Response: We believe that a qualified person should be able to disclaim responsibility if he or she relies on a report, opinion, or statement of another expert who is not a qualified person as long as the qualified person states in the report that he or she has relied on those other reports, opinions, or statements.

Question 115: Should we require that the technical report summary not include large amounts of technical or other project data, either in the report or as appendices to the report, as proposed? Why or why not? Should we require a qualified person to draft the technical report summary to conform, to the extent practicable, with plain English principles under the Securities Act and Exchange Act, as proposed?

Response: We agree with the Commission's desire to require that the technical report summary not include large amounts of technical or other project data, either in the report or as appendices to the report as this data is likely beyond the understanding of many investors and the information is proprietary to the registrant.

Question 116: Should we require registrants to describe the internal controls that they use to help ensure the reliability of their disclosure of exploration results and estimates of mineral resources and mineral reserves, as proposed? Should we require that such internal controls disclosure address quality control and quality assurance programs, verification of analytical procedures, and comprehensive risk inherent in the estimation, as proposed? Are there other items, in addition to or in lieu of those proposed items, that should be included in such disclosure? Are there items that should be excluded from the proposed internal controls disclosure requirement? In each case, why or why not?

Response: We do not believe the Commission should require a registrant to describe the internal controls that a registrant uses to help ensure the reliability of its disclosures of exploration results, estimates of mineral resources and mineral reserves, as well as addressing within those disclosures the quality control and quality assurance programs, verification of analytical procedures, and comprehensive risk inherent in the estimation. We do not have similar discussions of internal controls throughout the Form 10-K for other areas, such as risk factors and MD&A, etc., other than the financial reporting and controls related to reserve amounts, which should already be included as part of management's evaluation of internal controls over financial reporting (which includes review of mine reserve information for various accounting matters such as depreciation and asset retirement obligation, etc.). This would create a significant burden on registrants and greatly outweigh any marginal benefit to investors.

Question 117: Should we require registrants to describe the internal controls that they use to help ensure the reliability of their disclosure of exploration results and estimates of mineral resources and mineral reserves, as proposed? Should we require that such internal controls disclosure address quality control and quality assurance programs, verification of analytical procedures, and comprehensive risk inherent in the estimation, as proposed? Are there other items, in addition to or in lieu of those proposed items, that should be included in such disclosure? Are there items that should be excluded from the proposed internal controls disclosure requirement? In each case, why or why not?

Response: See out response to Question 116.

Question 118: Should we amend Form 20-F to conform it to the disclosure requirements of subpart 1300 of Regulation S-K and Item 601(b)(96), as proposed?

Response: For the Commission to achieve its required goal to bring property disclosures for domestic companies in line with global reporting standards it seems that foreign private issuers should be subject to the same disclosure requirements as domestic mining operators.

Question 119: Should foreign private issuers that use or refer to Form 20-F for their SEC filings be subject to the same mining disclosure requirements as domestic mining registrants, as proposed? Why or why not?

Response: See our response to Question 118.

Question 120: Should we continue to permit Canadian issuers to provide disclosure under NI 43-101, as they are currently allowed to do pursuant to the foreign or state law exception, as an alternative to providing disclosure under the proposed rules? If so, what would be the justification for such differential treatment?

Response: The disclosure requirements proposed by the Commission are far more expansive than those for Canadian issuers under NI 43-101, therefore, unless the disclosure requirements are substantially the same, we do not believe that an exception should be provided.

Question 121: Should we amend Form 1-A to require Regulation A issuers engaged in mining operations to refer to, and if required, provide the disclosure under subpart 1300 of Regulation S-K, in addition to any disclosure required by Item 8 of that Form, as proposed? Why or why not? Alternatively, should the disclosure requirements in proposed subpart 1300 apply to only some Regulation A issuers (e.g., Regulation A issuers in Tier 2 offerings)? Should we instead exempt all Regulation A issuers from the proposed subpart 1300 disclosure requirements?

Response: We believe that because Form 1-A filers are subject to the property disclosures outlined in Guide 7, it is appropriate that they continue to be subject to the new proposed disclosures also. We believe that a mining registrant would have access to the required information to make the required disclosures.

Question 122: In lieu of imposing full subpart 1300 disclosure requirements on Regulation A issuers, should we limit, in whole or in part, the proposed subpart 1300 disclosure requirements for issuers in Regulation A offerings? If so, should these requirements be limited only for issuers in Tier 1 offerings? Why or why not? Further, which provisions of proposed subpart 1300 should, and should not, apply to issuers in Regulation A offerings? For example, should we require compliance with Item 1302's requirement to file the technical report summary as an exhibit only in Tier 2 offerings?

Response: See our response to Question 121.

Question 123: Would limiting disclosure of the information required under proposed subpart 1300 for issuers in Regulation A offerings increase the risk of inaccurate disclosure in such offerings or otherwise increase risks to investors?

Response: See our response to Question 121.

Question 124: We seek comment and data on the magnitude of the costs and benefits identified as well as any other costs and benefits that may result from the adoption of the proposed rules. In addition, we are

interested in views regarding these costs and benefits for particular types of covered registrants, such as smaller registrants or registrants currently reporting according to CRIRSCO-based disclosure codes.

> **Response:** We are a domestic coal mining company and not listed on foreign exchanges that have historically had these more robust property-disclosure requirements, so compliance with the proposed disclosure requirements poses significant challenges to us. Based on our previous experience in preparing reserve and similar reports, the inclusion of the proposed detail data would be extremely burdensome to us from an economic, time, and resources perspective. We believe the Commission's estimates are extremely low for estimating the cost of compliance under the proposed disclosures for many of the reasons highlighted in this response.

Question 125: We seek information that would help us quantify compliance costs. In particular, we invite comment from registrants or other mining companies that have had experience reporting under any of the CRIRSCO-based disclosure codes. For example, what are the costs associated with the qualified person requirement? If reporting in Canada or Australia, what are the costs associated with producing and filing the technical report summaries?

> **Response:** We currently do not file under any of the CIRSCO-based disclosure codes, therefore we have no comment.

Question 126: We invite comment on the structure of compliance costs. In particular, to what extent are the compliance costs fixed versus variable? Are there scale advantages or disadvantages in the compliance costs, both in terms of project size or company size?

> **Response:** We have included our cost of compliance costs throughout our previous comments. We strongly believe that the current proposed disclosures would place a significant burden on registrants to comply.

Question 127: Are our estimates of the difference in costs of a pre-feasibility study relative to a feasibility study reasonable? If not, what would be more reasonable estimates of the difference in costs?

> **Response:** We have included our cost of compliance costs throughout our previous comments. We strongly believe that the current proposed disclosures would place a significant burden on registrants to comply.

Question 128: We also seek comment on the alternatives to the proposed rules discussed in this section, and to the costs and benefits of each alternative. Are there any other alternatives that we should consider in lieu of the proposed rules? If so, what are those alternatives and what are their expected costs and benefits?

> **Response:** We have included our alternatives throughout our previous comments. We strongly believe that the current proposed disclosures would place a significant burden on registrants to comply. Adoption of our alternatives will reduce the burden on registrants for compliance as many of our proposed alternative disclosures involve information already available to registrants.

Question 129: We are interested in comments and data related to any potential competitive effects from the proposed rules. In particular, we are interested in evidence and views on the current global competitive situation of U.S. mining registrants as well as the attractiveness of U.S. securities markets for foreign mining companies. To what extent does the current mining disclosure regime affect this competitive situation, if at all? Would the proposed rules improve the global competitiveness of U.S. mining registrants and securities markets? If so, how?

Response: We have included throughout our responses our strong concerns regarding the proprietary and confidential information the proposed disclosures are asking registrants to disclose. We believe that if the proposal where to stand as currently written it would place us at competitive disadvantage to non-registrants, vendors, customers, and other individuals. Our most significant concerns were outlined in our letter to the Commission.