Industrial Minerals Association — North America

January 31, 2011

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

RE: FILE NUMBER S7-41-10 – SEC PROPOSED RULE – MINE SAFETY DISCLOSURE – RIN 3235-AK83

Dear Ms. Murphy:

The Industrial Minerals Association – North America ("IMA–NA") is pleased to submit these comments in response to the Security and Exchange Commission's ("SEC") notice of proposed rulemaking on mine safety disclosure. (75 FR 80374, *et seq.*; December 22, 2010).

IMA-NA is an industrial trade association that represents companies that produce industrial minerals such as ball clay, barite, bentonite, borates, calcium carbonate, diatomite, feldspar, industrial sand, kaolin, mica, soda ash, talc, wollastonite, and other industrial minerals, and associate member companies that provide goods and services to the industry. IMA-NA typically represents seventy-five percent or more of the production for each of these minerals in North America. IMA-NA's producer membership includes companies with production and/or processing facilities in the United States, Canada and/or Mexico.

Industrial minerals are critical to the manufacturing processes of many of the products that we use every day. They are used in the production of glass, ceramics, paper, plastics, rubber, detergents, insulation, pharmaceuticals, and cosmetics. They also are used in foundry cores and molds used for metal castings, paints, filtration, metallurgical applications, refractory products and specialty fillers. While we believe that regulations have a place in business, we also believe there have been numerous instances where the government has overregulated our industry with onerous provisions that adversely impact our members' ability to compete both domestically and internationally.

The SEC's proposed rule is intended to implement Section 1503 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank")(Pub. L. 111-203 (July 21, 2010)). The mine safety disclosure requirements set forth in Section 1503 refer to and are based on safety and health requirements applicable to mines under the Federal Mine Safety and Health Act of 1977 ("Mine Act")(30 U.S.C. 801 *et seq.*). Section 1503 requires any reporting issuer that is a mine operator, or has a subsidiary that is an operator, to disclose in each periodic report filed with the SEC information related to health and safety violations, including the number of certain violations, orders, and citations received from the Department of Labor's Mine Safety and Health Administration ("MSHA") among other matters. Issuers also must disclose in their Form 8-K reports the receipt from MSHA of any imminent danger orders or notices indicating that a mine has a pattern or potential pattern of violating mandatory health and safety standards.

IMA-NA's producer member companies encompass many different types of business organization . . . some are publicly traded, some not; some are reporting issuers that are mine operators, or subsidiaries of an operator, others are not. Consequently, some of IMA-NA producer member companies are subject to the mine safety disclosure requirements of Dodd-Frank, others are not. IMA-NA's comments to the SEC are intended to represent the interests of its total membership, not one type of business organization to the advantage or disadvantage of another.

The SEC's proposed rule on mine safety disclosure predates the issuance of President Obama's Executive Order No. 13563 of January 18, 2011, on "Improving Regulation and Regulatory Review" (76 FR 3821, *et seq.*; January 21, 2011), but IMA-NA finds provisions of the President's recent executive order clearly have applicability to the SEC's proposed rule. Executive Order No. 13563 is intended to address unreasonable burdens on business that have stifled innovation and have had a chilling effect on growth and jobs. Specifically, Section 4 provides:

> Where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, each agency shall indentify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. These approaches include warnings, appropriate default rules, and disclosure requirements as well as provision of information to the public that is clear and intelligible. (76 FR 3822).

In its notice of proposed rulemaking, the SEC acknowledges that the requirements of Section 1503 already are in effect. 75 FR 80375. The SEC also acknowledges that no rulemaking is required under Section 1503. *See* http://www.sec.gov/spotlight/dodd-frank/speccorpdisclosure.shtml. So why this rulemaking?

IMA-NA acknowledges that the SEC is authorized by Section 1503 of Dodd-Frank to issue such rules and regulations as are necessary and appropriate for the protection of investors and to carry out the purposes of Section 1503. Section 1503(d)(2) of Dodd-Frank. That said, IMA-NA believes the best way for the SEC's final rule to implement Section 1503 of Dodd-Frank is to reiterate the relevant statutory language in the regulatory text of 17 CFR Parts 229, 239 and 249 as "Statutory Provisions" and leave it to those subject to the regulations to comply with the statutory and regulatory mandates in whatever way they deem appropriate.

There is precedent under the Mine Act for this recommended approach. There are numerous instances in Title 30 of the Code of Federal Regulations where MSHA did just that, citing the Mine Act and letting the Mine Act, and its statutory language, regulate the rights and responsibilities of affected entities and persons. *See*, e.g., 30 CFR § 75.500 and CFR § 75.501. The SEC has come close to following this recommendation in its proposed §229.106, but went beyond what necessarily is required. IMA-NA recommends that the SEC limit itself to a literal statutory recitation and that it not specify a particular presentation format for disclosure.

In the same vein, IMA-NA urges the SEC not to expand any final rule beyond the statutory letter of the law. For instance, the SEC has proposed an additional disclosure item not required by Dodd-Frank. *See*, e.g., 75 FR 80378 and 80380 (categories of violations; new Items 106(a)(1) and 106(a)(2) of Regulation S-K). IMA-NA opposes such unwarranted expansion of the SEC's authority beyond its statutory mandate.

The SEC also has posed the question of whether the use of interactive data makes it possible to reduce reporting costs by using the same data that already is available through MSHA's data retrieval system.

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See 75 FR 80377. This same issue of integration and innovation was identified in Section 3 of Executive Order No. 13563, which provides in pertinent part:

> In developing regulatory actions and identifying appropriate approaches, each agency shall attempt to promote . . . coordination, simplification, and harmonization. Each agency shall also seek to identify, as appropriate, means to achieve regulatory goals that are designed to promote innovation. (76 FR 3821).

MSHA's data retrieval system is a rich interactive data base that potentially can be used for multiple purposes, including mine safety disclosure compliance under Section 1503 of Dodd-Frank. However, to our knowledge, this interactive search function cannot currently be performed. IMA-NA encourages MSHA to further develop this data base to accommodate individualized data retrieval needs . . . for SEC mine safety disclosure or other salutary purposes.

The metal/nonmetal mining sector has over 12,000 operations throughout the United States and employs over 200,000 people in good-paying, safe jobs that are the economic backbone for many communities throughout the country. Regulatory "red tape" should not unnecessarily impede the production of mineral resources this nation needs and demands, the pursuits of the miners who produce them or the consumers who utilize them. Neither the SEC nor IMA-NA's producer member companies can alter the requirements of Section 1503 of Dodd-Frank. That is not our place. It is the SEC's responsibility to implement the statutory provisions regarding mine safety disclosure and it is the responsibility of IMA-NA's affected producer members to comply with them. However, IMA-NA believes that by incorporating "statutory provisions" into its regulatory text the SEC not only will be honoring its statutory mandate and Executive Order No. 13563, but also will be demonstrating "[t]hat government is best which governs least." (Thomas Paine).

IMA-NA and its member companies are committed to improving mine safety and preventing injury to those who work in our mines and production facilities. Our actions speak louder than words, as it should be.

IMA-NA is pleased to have had the opportunity to comment on the SEC's proposed rule on mine safety disclosure and it stands ready to assist in a constructive manner in the promulgation of an appropriate regulation.

Sincerely,

Mark G. Ellis
President

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