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March 2, 2011

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

Re: Proposed Mine Safety Disclosure – File No. S7-41-10

Dear Ms. Murphy:

In Mine Safety Disclosure, Release Nos. 33-9164 and 34-63548 (the "Release"), the Commission has proposed various amendments to its rules to implement Section 1503 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). We welcome the opportunity to comment on the proposals.

In general, we agree the Commission should amend its rules to give effect to Section 1503 of the Dodd-Frank Act, which will help clarify for issuers how Section 1503 should be applied. The Release does, however, raise a number of questions and concerns, and the Commission has included specific comment requests with respect to many of the proposed amendments. We address some of these issues below and, where applicable, indicate the number of the related comment request.

Required Disclosure Should Not Go Beyond the Dodd-Frank Act Requirements

We strongly urge the Commission not to expand the scope of the required disclosure beyond that set out in the Dodd-Frank Act. We believe not all the detailed information required by Section 1503 is necessarily material to investors, and to the extent that any of the information is material to investors and it falls within line item requirements or its omission would make the statements made misleading (under the circumstances in which they

are made), it is of course already required to be disclosed by the Commission's existing rules.[1] Further, the level of granularity of the information required by Section 1503 results in voluminous disclosures that may in fact impede investor understanding. We commend the Commission for addressing that concern in parts of the proposal, as for example in locating the new disclosure in an exhibit to each periodic report rather than in the body of the report itself, but for the same reason, the Commission should also limit the required content of the disclosure.

In this regard, we support the following aspects of the Commission's proposal:

- *Reporting of Significant and Substantial (S&S) Violations Only* – We agree with the Commission that the inclusion of the words "significant and substantial" in Section 1503(a) indicates Congressional intent to require disclosure of only S&S violations and not every violation. (Comment Request #14)

- *Fatality Reporting for U.S. Mines Only* – We agree with the Commission that, although Section 1503(a)(1)(G) is not limited to only mines subject to the Federal Mine Safety and Health Act of 1977 (the "Mine Act"), the definition of "coal or other mine" in Section 1503(e)(2) only applies to mines that are subject to the Mine Act. Accordingly, we agree that only disclosure of fatalities at U.S. mines should be required. This approach would also eliminate the confusion that might result if certain parts of the disclosure cover a different group of mines than the rest of the disclosure. Further, as noted in the Release, the Mine Safety and Health Administration ("MSHA") has a comprehensive regulatory framework in place for determining whether a fatality is mining-related, and it would be difficult to standardize reporting for mines that are not subject to the Mine Act. (Comment Request #17)

- *Reporting of "Chargeable" Fatalities Only* – We support the Commission's proposal to require disclosure of all fatalities that are not "non-chargeable" under MSHA's regulatory framework. We believe this reflects the concept of "mining-related fatalities" used in Section 1503(a)(1)(G), and a requirement to report all fatalities would go beyond the scope of the Dodd-Frank Act. We recommend that the Commission add an instruction to the proposed rule clarifying that this disclosure requirement only applies to "chargeable" fatalities. We also recommend that the Commission add an instruction clarifying that fatalities are not required to be disclosed while under review by the MSHA's Fatality Review Committee (the "FRC") if the issuer has a good-faith belief that the fatality is "non-chargeable." If the fatality is ultimately determined by the FRC to be "chargeable," the issuer should include it in its next periodic report. (Comment Request #18)

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[1] For example, as the Commission notes in the Release, material information regarding mine safety may be required in periodic reports under the Securities Exchange Act of 1934, as amended (the "Exchange Act") pursuant to Regulation S-K Item 101 (Business), Item 103 (Legal Proceedings), Item 303 (Management's Discussion and Analysis of Financial Condition and Results of Operations) and Item 503(c) (Risk Factors).

In the following areas, however, the Commission's proposals would expand the required disclosure beyond that required by the Dodd-Frank Act, and we strongly urge the Commission to remove these elements of the proposal:

- *No Updates of Pending Legal Actions* – We oppose the Commission's proposal to require disclosure of developments "material to a legal action previously reported under this provision."[2] Many of the legal actions before the Federal Mine Safety and Health Review Commission ("FMSHRC") are initiated by an issuer to contest MSHA orders and citations. The amounts at issue are often very small (sometimes as little as a few thousand dollars), and a mining company might well have hundreds of these actions pending at any given time. To the extent that any of these actions are material to the issuer, they are already required to be reported (and updated) pursuant to Regulation S-K Item 103 (Legal Proceedings). We believe this proposed disclosure would place a heavy burden on issuers to track and produce a large volume of disclosure with no benefit to investors. (Comment Request #20)

- *Limit Disclosure to Number of Pending Legal Actions* – We also oppose the Commission's proposal to require additional information regarding pending FMSHRC actions, such as the date instituted, the party by whom instituted, the name and location of the mine and a brief description of the category of the violation. The extra burden resulting from the need to disclose this information is not contemplated by the statute. We believe Section 1503(a)(3) should be interpreted to require disclosure, for each mine, of the *number* of pending FMSHRC legal actions. This would permit a relatively concise and streamlined presentation of the required information in a single table, with columns showing the number of orders, citations, "chargeable" fatalities and legal actions for each mine. (Comment Request #21)

- *No Cumulative Total of Proposed Assessments* – We oppose the Commission's proposal to require a cumulative total of all proposed assessments of penalties outstanding as of the end of the reporting period, as it goes beyond the scope of the Dodd-Frank Act and adds an additional burden on issuers to track this information. In addition, unlike the disclosure required by the Dodd-Frank Act, we believe the amount of outstanding assessments at any given time may not be indicative of an issuer's safety record during the reporting period but rather the issuer's decisions to pay or contest assessments. (Comment Request #15)

We similarly urge the Commission not to add any further Form 8-K disclosure. (Comment Request #24)

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[2] Proposed Instruction to Item 106(a)(4) of Regulation S-K.

Location and Liability Standards

As discussed above, we believe not all the detailed information required by Section 1503 is necessarily material to investors. Several other concepts flow from that conclusion, some of which are already reflected in the Commission's proposal.

We agree with the following aspects of the Commission's proposal:

- *Filing as an Exhibit* – We support the Commission's proposal to require the filing of the periodic disclosure required by Section 1503(a) in an exhibit to the relevant periodic report. We also agree that very brief disclosure in the body of the report that refers to the exhibit is appropriate. We commend the Commission for proposing an approach that will facilitate access to the required information without overburdening periodic Exchange Act reports with this voluminous new disclosure. (Comment Request #9)

- *No Disclosure in Registration Statements* – We strongly support the Commission's proposal to not require mine safety related disclosure in registration statements under the Securities Act. Section 1503 applies only to Exchange Act reporting requirements. (Comment Request #10)

- *No Loss of S-3 Eligibility* – We also strongly support the Commission's proposal to include the Section 1503(b) disclosure in the list of items with respect to which failing to timely file a Current Report on Form 8-K ("Form 8-K") will not result in the loss of eligibility to use Form S-3 registration statements. (Comment Request #27) As a consequence, failure to file a Form 8-K with Section 1503(b) disclosure will not result in status as an "ineligible issuer" pursuant to Rule 405 under the Securities Act (resulting in, among other things, ineligibility to file automatically effective registration statements), which we also support. Failure to file Form 8-Ks generally also does not affect eligibility to use Rule 144 under the Securities Act, and we agree these Form 8-Ks should be no different in that respect.

We believe, however, that the following concepts are also consistent with this approach and with the above points:

- *Furnished, Not Filed* – We note that the Release is silent (as is the Dodd-Frank Act itself) with respect to whether Section 1503 disclosure would be considered "filed with" or "furnished to" the Commission, and we strongly urge the Commission to provide that all Section 1503 disclosure be "furnished to" the Commission. As a consequence, the new disclosure would not be incorporated by reference into registration statements or subject to Exchange Act Section 18 liability, which we believe is appropriate.

- *No Violation of Section 10(b) of the Exchange Act* – We strongly urge the Commission to add the Section 1503(b) disclosure to the list of items with respect to which the failure to file a Form 8-K will not be deemed to be a violation of Section

10(b) of the Exchange Act or Rule 10b-5 under the Exchange Act. (Comment Request #28)

Scope of Rule

Definition of Subsidiary

We support the Commission's proposal to define the term "subsidiary" in accordance with Rule 1-02(x) of Regulation S-X. We also note that this definition is identical to the definition of "subsidiary" found in Rule 405 under the Securities Act of 1933, as amended (the "Securities Act"), and Rule 12b-2 under the Securities Exchange Act of 1934, as amended (the "Securities Exchange Act"), which apply to other elements of issuers' periodic disclosure. We believe this consistency will reduce the compliance burden of issuers with respect to the new disclosure. (Comment Request #1)

Application Only to U.S. Mines

We support the Commission's proposal to apply Section 1503 only to mines that are subject to the Mine Act. We agree with the Commission that Section 1503 refers specifically to mines that are subject to the Mine Act and that the Mine Act applies only to mines located in the United States. In addition, because most of the reporting requirements found in Section 1503 make specific reference to sections of the Mine Act, the Commission would need to develop a different framework for reporting on mine safety outside the United States, presumably based on local mine safety regulation, which would likely result in considerably different disclosure from jurisdiction to jurisdiction. (Comment Request #2)

No Current Reporting for Foreign Private Issuers

We support the Commission's proposal to exclude foreign private issuers from the current reporting requirements of Section 1503(b). As noted in the Release, we agree that the Dodd-Frank Act refers specifically to a Form 8-K, a form applicable only to domestic issuers and not to foreign private issuers, and we see no basis for changing the current framework of reporting for foreign private issuers. (Comment Request #26)

Avoid Repetition

We recommend that the Commission require only fourth quarter mine safety information in an Annual Report on Form 10-K ("Form 10-K") rather than information covering the full fiscal year, and in any event not both fourth quarter and full year information. Information for each of the first three quarters of the year will have already been disclosed in an issuer's Quarterly Reports on Form 10-Q (each, a "Form 10-Q"), and we believe the repetition of this voluminous information would serve no purpose. We acknowledge that Section 1503(a) contemplates disclosure in a periodic report "for the time period covered by such report," but this expression is ambiguous as applied to Form 10-K, and the better approach is to avoid wholesale repetition of voluminous disclosure. This would be consistent with other items of Form 10-K –

for example, Item 5, in which share repurchase information is required only for the fourth quarter (as the first three quarters are covered by Form 10-Q). (Comment Request #12)

Format of Information

No Specific Format

We support the Commission's approach of not prescribing a specific presentation (tabular or otherwise) for the disclosure required by Section 1503. Issuers should be free to determine how best to present this information in a comprehensible fashion, and the presentation may change over time as a result of changes to the Mine Act or the informational database that already exists for reporting most of this information to MSHA. If the MSHA data retrieval system changes in the future to allow more efficient incorporation of the required information into an issuer's periodic reports, specific formatting requirements should not prevent an issuer from doing so. (Comment Request #8)

However, in the same vein, we oppose the Commission's proposal to require a brief description of each category of violation disclosed. We believe this requirement will result in expanded boilerplate language that will not be helpful to investors. Furthermore, it is not required by Section 1503(a). We also note that this information is fully available to interested investors in the Mine Act itself. (Comment Request #22)

Explanatory Information Permitted

We support the Commission's approach, as noted in the Release, to permit issuers to include additional information to provide context to the required disclosure. In the same vein, issuers should be permitted (but not required) to note contested assessments separately (Comment Request #16), as well as vacated, dismissed or reduced orders, citations, violations or assessments.

Interactive Data Format

We strongly support the Commission's proposal not to require that the new disclosure be included in an interactive data format, such as XML or XBRL. We doubt that investors would use any of the required information for statistical analysis. We note that many issuers have recently experienced timing and other difficulties in filing interactive data, and additional interactive data requirements would further increase this burden on issuers. We also understand that the current MSHA data retrieval system does not facilitate incorporation into an interactive data format for periodic reporting with the Commission, so that use of interactive data would not offer any reduction of reporting costs for issuers but rather would likely increase those costs. (Comment Request #11)

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We thank you for the opportunity to submit this comment letter. Please do not hesitate to contact Nicolas Grabar or Sandra L. Flow (212-225-2000) if you would like to discuss these matters further.

Very truly yours,

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