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CATHY DOUGLAS
VICE PRESIDENT, CHIEF ACCOUNTING OFFICER

March 2, 2011

Elizabeth Murphy
Secretary
U.S Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549-1090

RE: Disclosure of Payment by Resource Extraction Issuers (File No. S7-42-10)

Anadarko Petroleum Corporation ("APC") is pleased to provide comments on the Securities and Exchange Commission's ("SEC" or "the Commission") proposed rules regarding Disclosure of Payments by Resource Extraction Issuers pursuant to Section 13(q) of the Securities Exchange Act of 1934. APC is a member of the American Petroleum Institute ("API") and a supporter of the Extractive Industry Transparency Initiative ("EITI"), and we applaud the transparency goals of Section 1504 of the Dodd-Frank Act ("The Act".)

Incorporating key recommendations provided by the API in its comment letter (filed in regards to Section 13(q)) is essential for the Commission to comply with President Obama's January 18, 2011, Executive Order on Improving Regulation and Regulatory Review. Among other things, the Executive Order makes clear that regulatory action should promote economic growth and competitiveness, use the least burdensome means for achieving regulatory ends, and take into account benefits and costs, both quantitative and qualitative.

We are concerned, however, that if incorrectly implemented, not only is it unlikely that the goals of The Act will be achieved, but the costs to issuers associated with accumulation of required information would be overly burdensome.

Key Areas for Commission Rulemaking Discretion

Fortunately, we believe the Commission has sufficient rulemaking discretion to implement Section 13(q) in a manner that is both true to the language and purpose of said provision, and consistent with the Commission's obligations to protect investors and promote competition and efficiency.
APC comments are as follows:

- ***Aggregation of publicly available information.***
  The Act provides the Commission with discretion to maintain the information submitted by individual resource extraction issuers in confidence for the Commission's internal use and to make only a compilation of such information available to the public. APC supports the thoughts and concerns surrounding the notion of "public" information raised by the API in its comment letter addressing 13(q) (excerpt attached as Exhibit 1). The SEC's public compilation could aggregate payment information from all SEC filers at the country level. This compilation approach for public disclosure is the simplest, least burdensome and most effective way to implement Section 13(q) consistent with the statutory language.

- ***XBRL Requirements.***
  In response to question #79, APC supports eXtensible Business Reporting Language ("XBRL") as the most suitable interactive data standard for the reporting of payment information to be provided under this rule. We also believe that use of XBRL will allow the Commission to simplify its preparation of the annual public compilation. XBRL is currently used by registrants to tag financial statements included in filings with the Commission and most registrants have either staff who are trained in XBRL tagging or third-party service providers who are performing XBRL tagging under the registrant's direction.

- ***Consistency in Annual Compilation and Issuer Requirements.***
  We have concerns related to the Commission's ability to compile the information, as well as the proposed requirements on issuers to provide required information on a more granular basis than may be required for the purposes of the compilation.

While registrants are required under the statute to provide data below country level, we note that such granular reporting could result in inconsistencies across issuers, caused by different interpretations of both the definitions and categories of required information and also XBRL tagging for projects, business segments and governmental entities. We also note that XBRL requires a consistent taxonomy to be used across all registrants for all levels and categories of information provided in order for the information compiled by the Commission to be comparable across registrants and the industry.

As such, we request that the Commission consider these concerns in the process of defining "project," and other disclosure categories, as well as consider the requirements placed on issuers to provide the information at a level more granular than the level that the Commission may utilize in preparing the annual public compilation. We are concerned that these interpretational challenges could result in the inability to compile data consistently or comparably below the country level.

- ***Effective Date.***
  While we acknowledge that electronic tagging of the payment data is required under the statute, we also emphasize (as noted above) that XBRL requires a consistent taxonomy to be used across all registrants for all levels and categories of information provided in order for the information compiled by the Commission to be comparable across registrants and the industry. We believe that the Commission should consider the need for, and the development of, a consistent taxonomy for comparable compilation in the determination of the final effective date of the proposed rules.

- ***Audit Requirements.***
  In response to question #76, APC does not support an audit requirement for the payment information disclosure. Audit reports for financial statements are designed to obtain reasonable assurance as to whether the *financial statements* are free of material misstatement. Requiring the audit of the information provided pursuant to Section 13(q) would subject this data to a level of scrutiny beyond other individual disclosures within a registrant's annual financial statements, and to materiality levels that would be much lower than for a traditional financial statement. An audit requirement is not specified in the statute and would significantly increase the implementation and ongoing annual costs and burden associated with Section 13(q). For

these reasons, we do not believe that an audit of this disclosure is necessary.

As also noted in the API October 12, 2010, comment letter, a requirement to audit these payment disclosures to a level consistent with other financial disclosures would be a significant difference from existing EITI guidelines. An audit requirement would also create practicality issues for public accounting firms, who have already articulated concerns about the potential auditing requirements for extractive payments proposed in the IASB's *Extractive Industries* discussion paper.

We thank the Commission for the opportunity to provide these comments. We would be pleased to meet with the Commissioners or their staffs to discuss these comments further, as well as to provide such additional information as may be helpful.

Regards,

Cathy Douglas

Exhibit I: American Petroleum Institute Disclosure of Payments by Resource Extraction Issuers, File No. S7-42-10. Comment Letter Excerpt:

Key Areas for Commission Rulemaking Discretion
Fortunately, as reflected in the detailed comments submitted with this letter, we believe the Commission has sufficient rulemaking discretion to implement Section 13(q) in a manner that is both true to the language and purpose of that provision, while also consistent with the Commission's obligations to protect investors and promote competition and efficiency.

Key areas of Commission discretion include:

Aggregation of publicly available information. As explained in detail in our response to Question 86, Section 1504 of the Dodd-Frank Act provides the Commission with discretion to maintain the information submitted by individual resource extraction issuers in confidence for the Commission's internal use and to make only a compilation of such information available to the public. The public compilation could aggregate payment information from all SEC filers at the country level. This approach would be consistent with EITI, would promote the transparency goals of Section 13(q), and at the same time allow the Commission to fulfill its mandates to protect investors and promote competition and efficiency by protecting companies from disclosure of competitively sensitive information and from violation of laws prohibiting disclosure of specific commercial terms. This approach is the simplest, least burdensome, and most effective way to implement Section 13(q) consistent with the statutory language.

86 - Section 13(q)(3) requires the Commission to provide a compilation of the disclosure made by resource extraction issuers. Should the Commission provide the compilation on an annual basis? Should the compilation be provided on a calendar year basis, or would some other time period be more appropriate? Should the compilation provide information as to the type and total amount of payments made on a country basis? What other information should be provided in the compilation?

The Commission is required by Section 13(q) to decide how it will make information that is submitted to it under the statute available to the public. In order to best serve the objectives of the legislation, while also safeguarding its mission of protecting investors, the Commission should fashion a rule that allows for transparency while balancing the concerns of American businesses, foreign governments, and U.S. investors.

Section 13(q) consists primarily of two operative provisions. First, Section 13(q)(2) requires that "resource extraction issuers" report certain payments made to foreign governments "in an annual report" to the Commission. 15 U.S.C. § 78m(q)(2). Second, "*to the extent practicable*," Section 13(q)(3) requires the Commission to make "*a compilation*"[4] of that information available to the public. *Id.* § 78m(q)(3)(A) (emphases added). The plain statutory text thus requires the Commission to determine what information provided to it will be made publicly available in the compilation, and in what form.

Importantly, the statute does not require that the submitted reports themselves be publicly available. *See* 15 U.S.C. § 78m(q)(2). The reporting obligation is to the SEC, which is then required to make a "compilation" available. The overall organization of the statute reflects this understanding of the statutory obligations. While Section (2) deals with "Disclosure" and specifies the information that must be reported by issuers to the Commission, Section (3) of the statute separately addresses "Public Availability of Information." Thus, Congress did not contemplate that the information reported to the Commission would be directly disclosed to the public. The statute instead requires the Commission to make available an appropriately edited and arranged compilation.[5]

Congress is entirely capable of requiring issuers to make thorough disclosures directly to the public, when it intends to do so. As discussed below, the federal securities laws and regulations require issuers to post certain information directly on the Internet, or they require the Commission to make such disclosures. The fact that Congress chose to

require "a compilation," "as practicable," should not be taken lightly. "Congress is presumed to act intentionally and purposely when it includes language in one section but omits it in another." *Estate of Bell v. Commissioner*, 928 F.2d 901, 904 (9th Cir. 1991); *see also Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992) ("[A] legislature says in a statute what it means and means in a statute what it says there."). The specific choice of words in Section 1504 should guide the Commission in fashioning a rule. Thus, Commission has the flexibility to aggregate the reported payment information on a per-country basis, taking into account the practicability provision of the statute.[6]

By way of contrast, Section 1502 of Dodd-Frank (the "conflict minerals" provision) requires certain reporting and disclosure by companies that make products that require "conflict minerals" for production. 15 U.S.C. § 78m(p). This provision, which neighbors Section 1504 in the United States Code and bears similar transparency objectives, specifies a clear method for public disclosure. Under the conflict minerals provision, affected issuers must make an annual report to the Commission, but such persons must also "make available to the public on the Internet website of [the issuer]" the information required under the statute. *Id.* § 78m(p)(1)(E). By contrast, in Section 1504, Congress has given the Commission the responsibility of weighing the concerns of issuers and other stakeholders when fashioning an appropriate method for publicly disclosing *compiled* information.

Similarly, Section 13(1) of the Exchange Act requires certain issuers to directly "disclose to the public on a rapid and current basis" information concerning material changes in the finances of certain covered issuers. 15 U.S.C. § 78m(l)(as amended by Section 409 of the Sarbanes-Oxley Act). The statutory language specifies that the disclosure must be "in plain English" and "may include trend and qualitative information and graphic presentations." *Id.* While yet another disclosure provision, Section 13(f) of the Exchange Act, requires the Commission to "tabulate" information and make it available to the public so as to "maximize the usefulness of the information." *Id.* § 78m(g)(5). These variations in disclosure mechanisms should not be ignored. Congress clearly is capable of specifying different forms of public disclosure for different situations, and in the case of Section 1504, it has not specified that filers reports be public, or that they be disclosed in full by the Commission.

As discussed elsewhere in this letter and in the comments that have been submitted, the Commission should enact a rule that only discloses payments on an aggregated, per-country or similarly high-level basis to the general public.[7] Such a compilation would be consistent with current EITI practice, and would eliminate many of the competitive harms that issuers face under the current proposal (with public disclosure on a disaggregated basis). In fact, the statute itself requires that any rules issued under it support "international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals," namely, EITI. 15 U.S.C. § 78m(q)(2)(E); *see also id.* § 78m(q)(1)(C)(ii) (requiring a definition of "payment" "consistent with the guidelines of the Extractive Industries Transparency Initiative"). The legislative history of Section 1504 also makes clear that the statute was intended to "complement multilateral transparency efforts such as [EITI]." 74 CONG. REC. S3815-16 (daily ed. May 17, 2010) (statement of Sen. Richard Lugar). Although specific EITI standards are developed by the participating countries and companies, EITI principles strongly urge "respect for existing contracts and laws," and require weighing "the concerns of companies regarding commercial confidentiality." EITI SOURCE BOOK 34 (2005). The publication of an aggregated, per-country compilation would not only satisfy the specific text of the statute, it would fulfill the underlying goal of promoting the international transparency regime of EITI.

In sum, the text of Section 1504, the overall statutory scheme, and the congressional objectives which drove the passage of the statute, all suggest that the Commission should enact a rule which only makes public disclosure of reported issuer information through an appropriate compilation. In developing a process for such a compilation, the competitive concerns of affected companies and the principles behind the EITI strongly counsel in favor of public disclosure of payments on an aggregated, per-country or similar basis.[8]

By adopting the approach outlined above, the Commission could address most of industry's concerns in a single, effective step. The reporting rules applicable to individual resource extraction issuers under Section 13(q) could then be designed simply for the purpose of allowing issuers to provide the Commission with the information required to produce the Commission's compilation in the most efficient and least burdensome manner.

[4] A "compilation" is defined as "the act or action of gathering together . . . materials esp[ecially] from various sources," or alternatively, "something that is the product of the putting together of two or more items." WEBSTER'S THIRD INT'L DICTIONARY 464 (1976). The ordinary meaning of "compilation" also includes a collection of materials "arranged in an original way," such that "the resulting product constitutes an original work of authorship." BLACK'S LAW DICTIONARY 323 (9th ed. 2009).

[5] Following the statutory provision on public availability (15 U.S.C. § 78m(q)(3)(A)), clause (B) addresses "Other Information" and makes clear that the Commission cannot disclose information from outside of the issuers' reports to the general public. *Id.* § 78m(q)(3)(B) (specifying that the Commission need not "make available online information other than the information required to be submitted"). Thus, clause (B) limits the pool of information from which the Commission can draw when putting together its compilation for the public.

[6] Exemption 4 of the Freedom of Information Act, along with the criminal penalties imposed by the Trade Secrets Act, reinforces the notion that an agency must consider competitive harms when making disclosures. Both of these statutes limit the ability of government agencies to make commercial information publicly available. For example, Exemption 4 of the FOIA protects "trade secrets and commercial or financial information obtained from a person," so long as that information is considered confidential and disclosure is not expressly authorized by statute. 5 U.S.C. § 552(b)(4). Further, the Trade Secrets Act imposes criminal penalties on employees or officers of agencies that disclose "to any extent not authorized by law" any information received in the course of business (including information received in reports filed with the agency) that "relates to [] trade secrets" or other commercially sensitive information. 18 U.S.C. § 1905. Section 1504 should be interpreted in conformance with the specific requirements and underlying concerns of the Trade Secrets Act and Exemption 4 of the Freedom of Information Act.

[7] Although the Release only addresses this critical issue in two footnotes, the widespread public disclosure of payments on a per-project basis poses a significant competitive threat to issuers. The Release makes the unfounded assumption that the "compilation of information" that must be made available online "includes the type and total amount of payments made . . . on a per project and per government basis." Release, at 54 & n.133; *see also id.* at 58 n.141. Yet such disclosure would impose a costly, detrimental, and potentially dangerous requirement on issuers with no basis in the statutory text.

[8] The Commission may also consider enacting exceptions, based on its statutory mandate to make disclosure "practicable," for situations in which even a per-country disclosure would reveal information of a sensitive nature.