02 March 2011

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

RE: Comments Regarding File Number S7-42-10 on Payments by Resource Extraction Issuers

Dear Ms. Murphy:

We are writing on behalf of EARTHWORKS to provide comments on the Payments by Resource Extraction Issuers rules of the Dodd-Frank Act.

EARTHWORKS has a 23-year history of working to protect communities and the environment from the impacts of irresponsible mineral and energy development. We work with communities who are concerned about inappropriate and undisclosed payments made by extractive industries to national and local governments.

In addition to comments that we have submitted as members of the Publish What You Pay Coalition, we would like to share several particular concerns.

Several aspects of the proposed rules are particularly important in addressing the current lack of transparency of resource extraction payments to governments. In particular, it is important that the rules not exempt foreign issuers or smaller companies.

Several changes to the draft rules, however, are necessary to ensure that the rules meet the intent of the Dodd-Frank Act:

- the rules should require that companies "file" their disclosures in annual reports;
- the rules should apply to companies exchanging American Depository Receipts;
- the rules should require reporting on a complete set of payments;
- the rules should identify subsidiaries and entities under the control of the corporation comprehensively and include unconsolidated equity investees and joint venture partners; and
- the rules should include as commercial extraction the in-country transport of oil, gas, or minerals and natural gas compression facilities.

We have provided detailed comments below on a number of the questions that you requested comments on.

Definition of resource extraction issuer (questions 1-5)

In order to comply with the statutory intent of the Dodd-Frank Act, the Commission should not exempt any registered companies that are involved in extraction. This includes smaller companies, foreign issuers, government-owned companies, and entities exchanging American Depository Receipts. Small companies and foreign issuers, including those controlled by foreign governments, also face the temptation of making inappropriate and harmful payments to governments over commercial extraction arrangements and the Commission should require disclosure of payments by all issuers to protect investors and the public. Even relatively small payments by smaller companies can represent large sums to governments in many industrially less-developed countries. Small companies should also have accurate records of their payments, and so disclosure should not present an unreasonable burden to them. Any company that would de-register rather than disclose payments would face reputational risk over the charge that they were currently or were planning inappropriate payments.

The Commission should not at this time allow foreign issuers to disclose in accordance with their home country rules. Doing so would create inconsistent reporting because rules in other countries remain dissimilar.

The Commission should not exclude subsidiaries or asset-backed issuers. It is important and in accordance with statutory intent to prevent inappropriate payments from those entities as well.

Definition of commercial development of oil, natural gas, or minerals (questions 6-11)

The definition of the commercial development of oil, natural gas, or minerals must be comprehensive. In addition to the activities proposed (exploration, extraction, processing, and export), the commercial development of oil, natural gas, or minerals should include the in-country transportation of those products (e.g., pipeline operating companies). Natural gas compression should be considered part of processing and transport.

Definition of payment, project, and subsidiaries (questions 12-53)

The definition of payments should ensure that all forms of company payment to governments or relatives or associates of government officials are included. The rules should provide a broad, non-exhaustive list of categories of payments for which disclosure is required (see list in Publish What You Pay Coalition letter). Taxes on consumption or use of facilities should be included as these can, such as

with mineral processing consumption of water or electricity, represent important payments to local or national governments. Payments should also include dividends, payments for liabilities such as fines and compensation, and other ancillary payments made pursuant to the investment contract. Social and community payments, including infrastructure improvements, must be included as well since those may be explicit or implicit government conditions and are common components of the recognized revenue stream. The rules should specifically cover payments made in cash or in kind. Other material benefits that qualify as payments should be defined broadly.

The *de minimis* standard, if defined quantitatively, should include any payment that exceeds the equivalent of $1,000 or payments that, in the aggregate, exceed the equivalent of $15,000. Any definition could also account for differences in cost of living and income between different countries, with a lower *de minimis* threshold applying in countries with a lower cost of living.

Projects should be defined in relation to each lease, license, and/or other concession-level arrangement entered into by a resources extraction issuer. The definition should capture information related to the discrete, project-specific financial flows affiliated with extractive industry development activities and not aggregated. Project should not be defined to only mean a material project.

Companies should not report at a country-level unless a specific payment is only made at the country-level instead of according to project.

The definition of subsidiary and entity under the control of the corporation must be comprehensive. It should include unconsolidated equity investees and joint venture partners.

Definition of governments (questions 61-67)

The rules must specifically include any subnational governments as proposed. This should include foreign governments, any department, agency, or instrumentality of a foreign government, and any company owned by a foreign government.

We would also support including subnational governments within the United States, in order to provide similar disclosure and protections for communities and investors involved in U.S. operations.

Form of disclosure (questions 68-90)

The rules should require that disclosure be in annual reports (including forms 10-K, 20-F, 40-F, and Annual Report to Security Holders -- ARS) and registration statements. Disclosure should be “filed, “not just “furnished,” in those reports.

Investors and the public must have the additional disclosure assurance that “filing” provides.

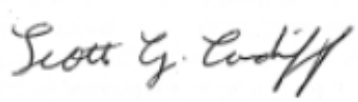
Effective date (question 91)

Since companies have known of the possibility of disclosure regulations for many years, no delay in implementation of the rules is necessary and it is appropriate to require disclosure in issuers' annual reports relating to the fiscal year ending on or after April 15, 2012.

Thank you for the opportunity to comment on these important provisions.

Sincerely,

Payal Sampat
International Program Director
EARTHWORKS’ No Dirty Gold campaign



Scott Cardiff
International Program Coordinator
EARTHWORKS’ No Dirty Gold campaign