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To: zzMSHA-Standards - Comments to Fed Reg Group

Cc: Richard.Tucker@Newmont.com

Subject: RIN 1219-AB51

11/08/06

Dear Secretary Chao:

We are writing with regard to the Department of Labor's proposal to change the regulations governing the assessment of civil penalties under the Mine Act.

As you are aware, all of us have been, and continue to be, strong supporters of efforts to improve mine safety. While we are certain that the changes proposed by the Mine Safety and Health Administration to its civil penalty assessment criteria and procedures were made in the same spirit, we believe these proposals have not adequately taken into account a number of matters.

First, when the Congress recently passed the MINER Act, we had the opportunity to fully address the issues involving civil penalties under the Mine Act. Rather than changing the statute to require across-the-board penalty increases, the MINER Act reflected our intent to focus more on serious violations and serious violators. The modifications proposed by MSHA, however, appear to us to take an opposite approach.

Second, in our view, the principal rationale behind civil penalties is the notion that increasing such penalties results in a safer workplace by increasing compliance. Accordingly, higher sanctions should be applied against operators, or industry sectors, that are deficient in the area of worker safety or compliance. The proposed regulations, however, raise sanctions for all operators and all sectors regardless of their safety or compliance history. For the metal and non-metal sector, the safety and compliance record has generally been one of consistent improvement. For example, MSHA's own statistics reveal that both the injury and fatality rates in this sector have steadily declined over the past ten years. Yet, the regulations, which contemplate a non-targeted, across-the-board adjustment, would increase the average penalty for a citation in this sector by 176 per cent. In our view, increased sanctions should be imposed on those that do not comply with the Act, or whose safety records are deficient, not on those that have demonstrated increasing levels of compliance and worker safety.

Third, while Congress did include in the MINER Act a directive to the agency to issue revised penalty regulations, we had anticipated an approach that would reflect our thinking in the MINER Act. Such an approach would focus and target increased compliance efforts on those most in need of remediation; and, would use tools such as increased civil sanctions to achieve, maintain and improve compliance where it was lacking. General increases in sanction levels, while perhaps mechanically simple, are not, in our view, the best way to deter and sanction non-compliance, increase compliance or, ultimately, enhance worker safety.

Finally, we note an inconsistency between the October 26,2006 MSHA policy letter (No. I06-III-4) on the use of flagrant penalties and the terms found in the MINER Act. The MINER Act defined the term "flagrant" and adopted it as a specific addition to Section 110(b) of the Mine Safety Act, providing a maximum penalty of $220,000.00 for reckless failures to eliminate (abate) a known violation of the most hazardous and serious types. We ask that these terms in the policy letter should be corrected in your pending rulemaking to make it consistent with the MINER Act by referencing Section 110(b), not (a), in 30 CFR 100.5(e),

We trust that you will take these views into consideration as the rule-making process moves forward; and we remain supportive of all efforts aimed at ensuring a safe and improving workplace for our nation's miners.

Sincerely,

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