Douglas Hileman, P.E., CPEA
13630 Crewe Street
Van Nuys, CA 91405-4235
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Via email

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Elizabeth M. Murphy, Secretary
U. S. Securities & Exchange Commission
100 F Street NE
Washington, DC 20549
Via email to: rule-comments@sec.gov

SUBJECT: Proposed Rule, Conflict Minerals
17 CFR Parts 229 and 249

I am please that the Securities and Exchange Commission re-opened comment period for the Proposed Rule regarding Conflict Minerals reporting as part of implementation of Section 1502 the Dodd-Frank Act.

I have over 30 years of experience in the environmental auditing field. I helped develop a certificate program in Environmental Auditing for University of California at Irvine Extension in the late 1980s, and taught in the eight years the certificate was offered. I have over 10 years of experience in Sustainability auditing. I was an in-house specialist for six years at a Big 4 accounting firm, where I supported approximately 100 financial audit procedures. I also supported many internal audit reviews of operations, compliance, and financial and non-financial reporting involving environmental and Sustainability matters. I was the primary auditor and report author of an audit of internal systems and controls related to environmental reserves, required under terms of an agreed Order with the SEC for a registrant; to my knowledge, this Order and this requirement were unprecedented, and remain unique to this day. I am a longtime member of professional organizations that promote the professional practice of environmental auditing, a member of the Institute of Internal Auditing, and a Certified Professional Environmental Auditor (management systems emphasis).

I am providing comments that align with the ~70 questions SEC posed in the Proposed Rules in the December 23, 2010 Federal Register. Where my comments are relevant to more than one of SEC's questions, I have indicated related questions in parentheses.

Q5 – Undue Costs for Smaller Reporting Companies: Smaller companies play an important role in the U.S. economy and providing goods and services that are used by larger manufacturers, and consumed by American consumers. The control of the supply chain of all companies – including smaller companies – is relevant to the goal of transparency regarding the origin of metals that could be conflict minerals originating in Democratic Republic of Congo of bordering countries (DRC Countries). Where other supply chain risks have been shared by many companies (such as liabilities posed by waste treatment or disposal companies or sites), commercial responses have arisen to pool resources and perform evaluations using high professional standards. These entities have provided services for many years, and have found reasonable ways to share costs. Similar arrangements are likely to arise if many companies (including smaller reporting companies) are subject to the same requirements for the same

minerals. I believe that the private sector will respond with mechanisms that will not impose undue costs on smaller reporting companies.

Q6 (Q26) – Requirement of companies to report: Q6 asks whether all companies should be required to provide disclosure and, if necessary, the Conflict Minerals Report (CMR). Q26 asks whether, as written in the Proposed Rules, companies that determine their products and services are Conflict Mineral (CM) Free must disclose this fact, but no more. Companies that determine their products include Conflict Minerals, or cannot determine whether they do or don't, must also disclose their CMR and the independent audit that supports the CMR. This arrangement provides a powerful incentive for all registrants to make the determination that their supply chain is CM-Free; with this determination, their disclosure is absolute minimal. Companies will be highly incentivized to steer the conclusion in this direction; there are several options to do this: scaled-down due diligence; use of inexperienced auditors; weak systems to ensure independence of auditors; application of high levels of materiality; allocation of responsibilities to other parties (such as contractors); or other justifications. Under the Proposed Rules, these will not be disclosed.

Other accounting rules and guidance addressing issues where investors seek transparency, and which depend on self-determination to decide whether disclosure is necessary, have not resulted in disclosures that allow comparative analysis by investors, Non-Governmental Organizations (NGOs), business partners (including supply chain and value chain), or the public. For example, FAS 143 (Asset Retirement Obligations (AROs)) requires registrants to disclose their AROs if they are material, of, if they cannot determine their AROs, to disclose that fact. FASB Interpretation Number 47 (FIN 47) a year later clarified what the SEC and investors expected. Relatively few companies have disclosed the amount of their AROs. I am not aware of any registrants that have disclosed that they were not able to determine their AROs. These balance sheet items are subject to review by financial auditors. It is possible or likely that these amounts are fine; however, they are not disclosed for the benefit of analysis or the public. Similarly, in February 2010, the SEC published guidance for registrants on financial disclosure of risks posed by climate change. This was a response to, at least in part, a series of requests by investors for clarification on the matter. The guidance was not a new rule or requirement, as SEC clearly stated, but rather a thorough roadmap of Regulation S-K for interested parties to follow as they considered this – or any other issue. Many investors, NGOs, and other stakeholders believed this guidance would focus more attention on the matter and result in more financial disclosures or discussion in Management Discussion and Analysis of Form 10-K or other financial filings. From my professional work, or following several professional publications and websites, I have seen no indication that this has been the case. I believe the SEC should require a Conflict Minerals Report and the supporting independent audit report to be disclosed, via description in an annual filing to the SEC, and posting to the registrant's website.

Q17 – Applicability and Disclosure: The Proposed Rules uses the example of CMs in a car radio, and poses the question of whether the auto maker should be required to consider CMs in the supply chain, and make appropriate disclosures. This example was provided to solicit comments on materiality, or the essential nature of CMs to the function of the product or services. The example is a good one. There are other products in an automobile that could contain minerals of interest: Global Positioning Systems (GPS), ignition systems, other electronics supporting auto performance. The auto maker is responsible for the supply chain of all these products. Full disclosure is of interest to investors considering purchasing, holding, or selling company stock. Full disclosure is also of interest to organizations making other

investments, such as leasing or purchasing a fleet of vehicles. Companies, municipalities, retirement fund investment groups, and other stakeholders may have policies regarding investments in companies and their relative diligence and disclosure regarding CMs. I believe that full disclosure, including the CMR and the supporting audit, would allow investors and other interested parties to review, compare, and make objective decisions using comparable information. Granting relief from these provisions is not consistent with the intent or language of the law.

Q22, Q23, Q24 – Disclosure, of what, and where?: There are initiatives to integrate financial and non-financial (most commonly, Sustainability) reporting. The International Integrated Reporting Committee is notable among them. The IIRC includes participation of all of the Big 4 accounting firms, the Global Reporting Initiative, and numerous stakeholders committed to complete, accurate, and trustworthy reporting and disclosures. I note that nothing in Dodd-Frank 1502 deals with financial reporting, so it is not subject to review or opinion by the registrant's financial auditor. Accounting firms are likely to be among the providers of services for audits and/or CMRs. The CM supply chain audit will involve review of operations, internal and external controls, and conformance with standards not related to financial reporting. Accounting firms other than the financial auditor (or any of numerous other qualified resources) may perform the audit that supports registrants' disclosures. I believe there should be full disclosure, including the firms providing the audit. The location of the disclosure matters less, as long as there can be no confusion that the disclosure and the underlying audit have been subject to procedures as part of the financial audit.

Q26 – Should issuers with necessary conflict minerals that did not originate in the DRC countries be required to disclose any information other than as proposed? I believe that, if no additional disclosures are required, then there will be few disclosures, and little for investors to review to gain their own comfort. I believe all registrants who use conflict minerals should prepare and disclose a Conflict Minerals Report, including the independent audit of the CMR. (see responses to Q6 and Q39).

Q28 – Maintaining Business Records: Business records form the basis for the registrant's CMRs and the basis for the independent auditor's procedures and conclusions. The supply chain of tin, tantalum, tungsten and gold is such that it may be months or years for them to work their way from the mine through the smelter, into component parts, and into products for registrants to sell. Questions are likely to arise regarding the chain of custody, and the procedures and audits, for potential CF materials that extent substantially back beyond a current reporting period. It is standard practice for there to be a requirement for documents and records that form the basis for compliance with other regulations to be maintained and available for a prescribed period of time. I believe that documents and records supporting the registrants' conclusions of CF-containing, or undetermined origin or CF-free should be maintained. The duration should be for not less than three years, and not more than seven years.

Q30, Q31, and Q32 – Disclosure of contents of CMR, audit report, and records retention: SEC requests comments on disclosure of results of the CMR. As noted above, registrants down the value chain may be purchasing products made in prior reporting years – perhaps several years prior. Audit reports typically contain findings and recommendations. Subsequent audit reports evaluate how these were addressed. CMRs, audit reports, management systems, tools, and the political situation in DRC countries are likely to change over time. A series of CMRs and supporting audit reports would provide a useful picture of how a registrant's policies,

systems, and controls have evolved over time. A series of reports would be necessary for investors (including institutional investors, prospective customers, and prospective business partners) who need information regarding company practices from prior reporting cycles. I believe the disclosures – whether in 10-K or other mechanisms – and CMRs and audit reports should be available on company websites for more than the proposed one year. The term should be no less than three years, and no more than seven years.

Q35 – Reasonably reliable representations: An automobile will include a radio that may contain tin, tungsten, tantalum or gold. An auto will also include many other components (as noted in Q17) that may also contain these metals. It would be unreasonable to require the auto maker to trace the origin of every mineral back to the smelter. I believe that reasonable representations one or two steps up the supply chain should be permitted. However, I also believe that these representations, and/or the process of how registrants evaluated and relied upon these representations, would be of interest to potential investors. This is the type of information that would be included in a Conflict Minerals Report, which should be available (with the independent audit supporting it) to the public, as noted in my comments for Q6, Q26, and Q39.

Q36 – To the best of our knowledge: Comments were requested as to whether "to the best of our knowledge" or "[registrant] is not aware" would be acceptable as disclosure language. These phrases are often used in performance audit reports. I believe these phrases are reasonable conclusions, as long as the procedures, support, and rationale for these conclusions are also available to the reader. Without transparency and full disclosure of the CMR and the supporting audit, there is risk that these phrases would be used as a default conclusion, without the degree of due diligence that is intended in the law. I believe these phrases should not be acceptable without full disclosure of the underlying reports.

Q39 – Require full disclosure (Q6, Q26): Comments were requested as to whether the SEC should require disclosures, regardless of whether these minerals were determined to be conflict-free. I believe that without such disclosure, investors and other stakeholders will have very little assurance of registrants' systems and controls, the procedures of the evaluation, the credentials of the auditor, or other factors necessary to make meaningful decisions. My comment is decidedly "yes."

Q40 and Footnote 101 – Performance or Attestation: Comments were requested on whether Performance Audits or Attestation Audits were more appropriate for Section 1502. Internal auditors are relied upon by many companies for evaluations of internal systems and controls for operations, compliance, and reporting. Performance Audits are commonly used by Internal Audit departments in support of quarterly certifications (Sarbanes-Oxley Section 302) related to operations, reporting, and compliance. Other audit practitioners, such as Environmental, Health & Safety (EHS) audit practitioners, use Performance Audits; BEAC's mission is to qualify EHS auditors and to oversee their continued proficiency and involvement in the profession. I believe Performance Audits are the appropriate audit standard for the Conflict Minerals Report audit.

Q42 – Certifying the Audit Report: Comments were requested regarding certification of audits. Audits are done by auditors. There are planning, implementation, and quality assurance and quality control procedures in audits. There are organizations that certify auditors. Many of these organizations have codes of conduct, continuing education requirements, and other

provisions to maintain a high caliber of expertise in auditors. The Board of Environmental, Health, and Safety Auditor Certifications (BEAC) is one such organization. BEAC is an independent, nonprofit corporation established in 1997 to issue professional certifications relating to environmental, health, and safety auditing and other scientific fields (www.beac.org). BEAC was originally created as a joint venture between The Institute of Internal Auditors (The IIA) and the Auditing Roundtable, Inc. (AR). The creation of BEAC recognized that individuals providing EHS auditing services must meet high standards, commit to a code of ethics and rigorous practices, continue their professional development and education, and be subject to review. BEAC is a member of the Council of Engineering and Scientific Specialty Boards, a third-party accreditation board, which has granted full accreditation to BEAC's Certified Professional Environmental Auditor (CPEA) certification. The Institute of Internal Auditors is another organization, with the Certified Internal Auditor designation. Internal auditors are experienced in reviewing internal controls and risk management for operations, compliance, and financial reporting. Indeed, many registrants rely upon internal auditors – or professionals with internal auditing skills – for their quarterly certifications to meet requirements of Section 302 of Sarbanes-Oxley. Social Accountability Accreditation Services is an independent organization that certifies to the SAI 8000 standard; this standard places heavy emphasis on human rights in the supply chain. The audit report will be an important component of the review process, and the CMR. I believe the audit report should be signed by an auditor, and that the auditor should indicate relevant credentials.

Q43 –Providing the Audit Report: Comments were requested regarding the proposal for registrants to furnish its independent private sector audit report as part of its CMR. As noted in Q6, Q26, and Q39, I believe the audit report should be furnished by all covered registrants, regardless of whether the supply chain has been determined to be conflict-free or not.

Q45 – Other ways to treat audit report: Comments were requested on how the audit report should be treated to balance the interests of quality and costs. Independence of the auditing firm and the auditor are important to the quality and trustworthiness of an audit report. Sarbanes-Oxley requires rotation of financial audit partners every five years. Major accounting firms have procedures to restrict ownership and trading of stock to ensure that employees cannot use inside information learned during audits for personal gain. Firms that perform other types of audits may have policies and procedures regarding independence, but, in general, they are not nearly as rigorous as those at the major accounting firms. The independent audits required as part of Section 1502 could yield inside information that could have financial implications on both the audited facility and its customers. This information could be used for personal or institutional gain. I suggest the SEC provide guidance related to auditing firm and auditor independence, such as certification language.

Q50 – Description of Due Diligence: Comments were requested regarding whether registrants should describe their due diligence efforts. Full disclosure of the Conflict Minerals Report and the supporting independent audit would provide the information investors and the public need.

Q54, Q55 – Due Diligence Standards: Comments were requested regarding prescription of due diligence standards, and disclosure of which standard was used. There are several standards that could be applied – in addition to those developed by OECD and referenced in the proposed regulations and in the roundtable held October 18. The OECD Guidance documents reference ISO 19011:2002 as Auditing Standards. BEAC publishes Performance and Program

Standards for the Professional Practice of EHS Auditing. Originally published in 1999, the BEAC Standards were prepared for the purpose of supporting both compliance auditing programs and management systems auditing programs. The 1999 BEAC Standards were one of the references used in developing ISO 19011. In 2008, BEAC published revisions to the BEAC Standards after completing a three-year peer review and exposure process; the 2008 BEAC Standards are being used as a reference by the U.S. Technical Advisory Group to update ISO 19011. BEAC Standards would be suitable for the independent third party audits required by the Conflict Minerals reporting. The Committee of Sponsoring Organizations (www.coso.org) has published a framework for internal controls, as well as a framework for enterprise risk management. The International Standards Organization (www.iso.org) has published ISO 31000 for Enterprise Risk Management. Social Accountability International has published SA 8000 standards for social responsibility; this is commonly used to address supply chain issues. ISO published ISO 26000 to address social responsibility.

I would note that different standards have been developed by different groups using different processes, and to meet different needs. Furthermore, these groups have different approaches to credentials of professionals (including auditors), continuing education, codes of ethics/ conduct, and maintaining or updating their standards. These processes do not always follow the rulemaking process the SEC is following now – widely publicizing goals and intentions, and inviting and considering public comment. I believe it is unadvisable for the SEC to prescribe a specific standard that was developed by any individual non-governmental entity. Indeed, in its guidance on financial disclosures regarding risks due to climate change, the SEC referenced the Carbon Disclosure Project and the Climate Registry – *two* organizations actively involved in disclosures related to climate change. I believe it is appropriate for the SEC to reference such standards, but: a) the SEC should not require any one; and b) the SEC should reference at least two, to provide examples of current models that would be acceptable models if implemented appropriately. With full disclosure of Conflict Minerals Reports and the supporting audit, investors, analysts, and the public can make their own evaluations of the appropriateness of standards, the sufficiency of the procedures, and the support for conclusions.

I appreciate the opportunity to comment on the proposed rules for this important issue. I hope my comments help the Commission develop, publish, and enforce final rules that achieve the intent of Dodd-Frank, impose minimal burden on registrants, and inspire the confidence and trust of investors and the public. Thank you.

Sincerely,

Douglas Hileman, P.E., CPEA
djhileman@gmail.com