



CERCLA 108b Bonding Authority

Although the EPA has the statutory authority under Section 108b of CERCLA to require mining companies to provide financial assurance to demonstrate that adequate funds are in place to complete mine cleanup, the EPA has failed to develop rules to implement its authority.

Mining is highest priority because mining is nation's largest source of toxic pollution, presenting a significant public health risk in the event of spills, untreated discharges, and unreclaimed mine operations.

- 1.9 billion pounds of toxics released to air, water and land in 2011, including arsenic, mercury, cadmium, lead, and selenium, according to EPA Toxic Release Inventory.

Mining has a significant presence on Superfund list, and mine clean-up represents a disproportionately high cost to taxpayers.

- The EPA has identified 156 hardrock mining sites nationwide that have the potential to cost between \$7 billion and \$24 billion total to clean up (at a maximum total cost to EPA of approximately \$15 billion).¹ This is over 19 times EPA's total annual Superfund budget of about \$775 million for 2013.²
- Approximately 7% of Superfund sites (National Priority List) are mining and/or smelting sites, yet 21% of Superfund dollars have been spent to date on mining sites, at a cost of \$2.5 billion.³
- According to the EPA Inspector General, the majority (59 percent) of all the projected CERCLA mine sites will need 40 years to "in perpetuity" for cleanup, and it questions the ability of businesses to sustain efforts for such lengths of time.⁴

Common corporate structures, interrelated corporate failures, and the cyclical nature of commodities prices within the hard rock mining industry increase the likelihood of uncontrolled releases of hazardous substances being left unmanaged.

- For example, the Pegasus Gold bankruptcy in 1998, left taxpayers liable for significant clean-up costs at a number of mine operations in western states. Acid mine drainage from the Zortman Landusky mine has polluted groundwater supplies and over a dozen streams in Montana's Little Rocky Mountains. Water treatment will be required in perpetuity.

Non-partisan government reports have recommended better financial assurance mechanisms to protect taxpayers and the environment from mine impacts.

¹ EPA Inspector General, "Nationwide Identification of Hardrock Mining Sites," Report #2004-P-00005, March 2004.

² <http://yosemite.epa.gov/opa/admpress.nsf/bd4379a92ceceeac8525735900400c27/d38e604ef465557a852579a3005f4630!OpenDocument>

³ EPA, Powerpoint presentation, CERCLA Section 108(b) Financial Responsibility Initiative," August 19, 2010.

⁴ EPA Inspector General, 2004.

- A 2006 Government Accountability Office (GAO) report concluded that the EPA could better ensure that companies at high risk of incurring environmental liabilities meet their cleanup obligations by implementing CERCLA 108b authority

CERCLA 108(b) TIMELINE

1980: Section 108b of CERCLA provides that EPA shall identify classes of facilities for which financial assurance requirements will be developed and that beginning no earlier than 1985 shall promulgate requirements for certain facilities consistent with the degree and duration or risk.

1997: The US National Research Council's review of US mining regulations concluded that "most land agencies do not require bonding for long-term or perpetual treatment of water at mine sites;" and that "if these costs are not assured, the public will eventually incur the costs of long-term water treatment."

2004: Inspector General of the EPA issues report finding that some mine owners have defaulted on multiple occasions on environmental liabilities associated with their mines, and the cleanup costs for these sites are being, or are expected to be, borne largely by taxpayers.

2005: Government Accountability Office issues report concluding that "financial assurances were not adequate to pay all estimated costs for required reclamation for 25 of the 48 operations," and that "cost estimates may be understated for about half of the remaining 23 operations."

2006: Government Accountability Office (GAO) report concluded that the EPA could better ensure that companies at high risk of incurring environmental liabilities meet their cleanup obligations by implementing CERCLA 108b authority. GAO testified that "Without the mandated financial assurance regulations, significant gaps in EPA's environmental financial assurance coverage exist, thereby increasing the risk that taxpayers will eventually have to assume financial responsibility for cleanup costs."⁵

2008: GAO reported that over a 10 year period, four federal agencies - BLM, the Forest Service, EPA, and OSM - had spent at least a total of \$2.6 billion to reclaim abandoned hardrock mines on federal, state, private, and Indian land. Of this amount, EPA had spent the most - \$2.2 billion, a median of about \$221 million annually.⁶

2008: Environmental groups sued EPA in the U.S. District Court to compel EPA action.

2009: The court ordered EPA to publish a priority notice identifying those classes of facilities for which EPA would first develop regulations under Section 108(b). In order to comply with the Court's order, EPA published the July 28, 2009 Hardrock Mining notice, in which it identified hardrock mining as its priority for the development of financial responsibility requirements.

2013: More than thirty years after statute enacted, CERCLA 108b rulemaking has still not been implemented.

⁵ GAO-06-884T

⁶ GAO-08-574T