Message

From: Burke, Ashley [ABurke@nma.org]
Sent: 12/4/2017 4:25:18 PM
To: Bennett, Tate [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1fa92542f7ca4d01973b18b2f11b9141-Bennett, El]
Subject: RE: ICYMI EPA Determines Risks from Hardrock Mining Industry Minimal and No Need for Additional Federal Requirements

Tawny Bridgeford asked that I follow up with you to provide our press statement. Our release can be found at the following link and the full text is pasted below. Please let me know if you have any questions.

https://nma.org/2017/12/01/epa-declines-impose-unnecessary-duplicative-financial-assurance-requirements-mining-industry/

EPA Declines to Impose Unnecessary, Duplicative Financial Assurance Requirements on Mining Industry

December 1, 2017

WASHINGTON, D.C. – The National Mining Association (NMA) today welcomed the U.S. Environmental Protection Agency's (EPA) decision that new, duplicative financial responsibility requirements for the hardrock mining industry are unnecessary. Today's decision stems from environmental group litigation seeking to use the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund Law) to impose additional, crippling financial and regulatory burdens on the mining industry.

"When litigation is used as a tool to attempt to force the government into unnecessary action against an industry, the result is bad policy," said Hal Quinn, NMA President and CEO. "Today's action shows that reason can prevail. Modern, advanced mining practices – coupled with existing state and federal environmental and financial assurance requirements – comprehensively cover the same risks contemplated under the CERCLA program."

"At a time when America is completely import-dependent for many key minerals, we should be supporting domestic mining and encouraging investment in the U.S. to lessen our dependence on foreign supply chains," added Quinn.

Background

Congress enacted CERCLA in 1980 to address threats to human health and the environment posed by the nation's past waste disposal practices. CERCLA is both a backward- and forward-looking statute, intended to address remediation of existing sites and prevent the creation of new ones. In the decades that followed its enactment, state and federal environmental and financial assurance programs were developed and implemented to address the very same risks contemplated by CERCLA's financial responsibility provisions.

In 2009, several environmental groups sued the EPA, attempting to use CERCLA to subject classes of facilities within the hardrock mining industry to additional financial responsibility requirements. As a result, EPA conducted a rulemaking to determine if new requirements were needed.

In 2016, EPA released a proposal premised on a faulty picture of the mining industry – it relied on legacy practices used at operations decades and even generations ago that are not representative of today's mining and mineral processing industry. In sum: the proposal addressed conditions that no

longer exist or are already remedied under other comprehensive regulatory programs. Today, the EPA acknowledged these fundamental flaws in the proposal and rightly determined that a new financial responsibility program was not needed.

Consistent with Legal Requirements

EPA's decision not to impose additional requirements on the mining and minerals industry is consistent with the ruling by the U.S. Court of Appeals for the District of Columbia Circuit, which stated that, while EPA had to act by Dec. 1, 2017 (the deadline established in the litigation), the final action could be no rule at all:

"[T]he proposed joint order 'does not require EPA to promulgate a new, stricter rule. At most, it 'merely requires that EPA conduct a rulemaking and then decide whether to promulgate a new rule – the content of which is not in any way dictated by the [proposed order on consent] – using a specific timeline." *In re Idaho Conservation League*, 811 F.3d 502, 524 (D.C. Cir. 2016).

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From: Bridgeford, Tawny
Sent: Monday, December 4, 2017 10:04 AM
To: Burke, Ashley <ABurke@nma.org>; Caswell, Jamie <JCaswell@nma.org>
Cc: Nolan, Rich <RNolan@nma.org>; Sweeney, Katie <KSweeney@nma.org>
Subject: FW: ICYMI EPA Determines Risks from Hardrock Mining Industry Minimal and No Need for Additional Federal Requirements

From: Bennett, Tate [mailto:Bennett.Tate@epa.gov]
Sent: Monday, December 4, 2017 10:02 AM
To: Bennett, Tate <Bennett.Tate@epa.gov>
Cc: Gordon, Stephen <gordon.stephen@epa.gov>; Dewey, Amy <Dewey.Amy@epa.gov>; Tanner, Lee <Tanner.Lee@epa.gov>
Subject: ICYMI EPA Determines Risks from Hardrock Mining Industry Minimal and No Need for Additional Federal Requirements

ICYMI, this announcement was made by EPA on Friday. Let us know if you have any questions and please flag with us any statements/press your organizations may have subsequently put out. -Tate with Administrator Pruitt's Office

EPA Determines Risks from Hardrock Mining Industry Minimal and No Need for Additional Federal Requirements

12/01/2017
Contact Information:
(press@epa.gov)

WASHINGTON – Today the U.S. Environmental Protection Agency (EPA) announced that the Agency will not issue final regulations for financial responsibility requirements for certain hardrock mining facilities.

"After careful analysis of public comments, the statutory authority, and the record for this rulemaking, EPA is confident that modern industry practices, along with existing state and federal requirements address risks from operating hardrock mining facilities," **said EPA Administrator Scott Pruitt.** "Additional financial assurance requirements are unnecessary and would impose an undue burden on this important sector of the American economy and rural America, where most of these mining jobs are based."

EPA published proposed regulations under section 108(b) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, or Superfund) on January 11, 2017, and the public comment period closed on July 11, 2017. EPA has decided not to issue final regulations because the risks associated with these facilities' operations are addressed by existing federal and state programs and industry practices. EPA was under a court-ordered deadline to take final action on this rulemaking by December 1, 2017. The decision not to issue final rules under CERCLA section 108(b) will be published in the Federal Register.

EPA has analyzed the need for financial responsibility requirements under CERCLA section 108(b) based on the degree and duration of risk associated with the production, transportation, treatment, storage, and disposal of hazardous substances from current hardrock mining operations, as well the risk of taxpayer funded cleanups at facilities operating under modern management practices and modern environmental regulations. That risk is identified by examining: the management of hazardous substances at such facilities; federal and state regulatory controls on that management and federal and state financial responsibility requirements; and, the payment experience of the Fund in responding to releases.

EPA concluded the degree and duration of risk associated with the modern production, transportation, treatment, storage or disposal of hazardous substances by the hardrock mining industry does not present a level of risk of taxpayer funded response actions that warrant imposition of financial responsibility requirements under CERCLA for this sector. This determination reflects EPA's interpretation of the statute, EPA's evaluation of the record for the proposed rule, and the approximately 11,000 public comments received by EPA on this rulemaking.

State mining and environmental regulators, as well as other federal agencies and the regulated community and financial sectors, commented that the proposed requirements would potentially interfere with state and local mining regulations, were unnecessary, and would be difficult to implement. This decision does not in any way affect EPA's authority to take appropriate response actions under CERCLA.

"I urged then President-elect Trump to stop the EPA's overreach into state regulation harming Montana businesses," said **U.S. Senate Western Caucus Chairman Steve Daines (R-MT).** "Instead of threatening the very industries that are a backbone of our Western economies, we need to support American families and American businesses to secure our mineral and energy independence. I am pleased the EPA has taken action."

"I am grateful for Administrator Pruitt's leadership in eliminating this costly, duplicative, and job-killing rule," **said Arizona Governor Doug Ducey.** "Arizona already has financial responsibility protections in place for hardrock mines and does not need a duplicative federal program that will unnecessarily burden a key Arizona industry."

"I am thankful that the EPA and Administrator Pruitt have decided to reject the proposed CERCLA rule," **said Idaho Governor Butch Otter.** "This is another victory for returning power to the states."

"The pending CERCLA 108(b) rulemaking has been at the top of my agenda," **said Nevada Governor Brian Sandoval.** "The success of Nevada's robust mine bonding program protects public safety and our environment

and ensures our critical mining industry can operate with certainty. I applaud the EPA for their thoughtful approach and thorough review of the proposed rule, for seeking comments from a diverse set of stakeholders and ultimately, for making the right decision. Today's action by the Administrator recognizes the reality that the states have been capably regulating mine bonding without interference from Washington and should be allowed to continue to do so."

"States have developed comprehensive financial responsibility programs for hardrock mining in the 30 years since the passage of CERCLA 108(b)(1)," **said Jim Ogsbury, executive director of the bipartisan Western Governors' Association.** "These programs require operators to comply with state regulations, implement reclamation and post-closure plans, and post financial assurance to minimize risks to public health and the environment. Western Governors appreciate EPA's decision regarding its proposed financial assurance requirements under CERCLA 108(b), which would have duplicated or supplanted existing and proven state financial assurance regulations."

"EPA's actions to rescind the CERCLA 108(b) financial assurance rule is another positive step by EPA in eliminating redundant regulations and recognizing the importance of cooperative federalism," **said Todd Parfitt, director of Wyoming Department of Environmental Quality.**

A pre-publication version of this action may be viewed at: https://www.epa.gov/superfund/proposed-rule-financial-responsibility-requirements-under-cercla-section-108b-classes

Contact Us to ask a question, provide feedback, or report a problem.

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