United States Steel Corporation
Environmental Affairs
1350 Penn Liberty Plaza I, Suite 200
Pittsburgh, PA 15219-2800
E-mail: twoodwell@uss.com

Tishie Woodwell
General Manager,
Environmental Affairs

Via Electronic Submission at http://www.regulations.gov
Docket ID EPA-HQ-SFUND-2015-0781

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The Honorable Scott Pruitt, Administrator
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

RE: Proposed Rule; Financial Responsibility Requirements Under CERCLA § 108(b) for Classes of Facilities in the Hardrock Mining Industry, 82 Fed. Reg. 3,338 (Jan. 11, 2017); Docket ID EPA-HQ-SFUND-2015-0781

Dear Administrator Pruitt,

United States Steel Corporation (U. S. Steel) appreciates this opportunity to comment on the Environmental Protection Agency's (EPA) proposal to include iron ore mining as a form of "hardrock mining" requiring financial responsibility regulation pursuant to CERCLA § 108(b). (Financial Responsibility Requirements Under CERCLA § 108(b) for Classes of Facilities in the Hardrock Mining, 82 Fed. Reg. 3,388 (Jan. 11, 2017)).

U. S. Steel owns and operates two iron ore mining facilities in northern Minnesota – Minntac in Mountain Iron and Keetac in Keewatin. These facilities have been producing taconite pellets for shipment and use in steelmaking blast furnaces for 40 years. Prior to that, natural iron ore was mined at these locations and shipped to steel plants. Iron ore was discovered in the area in the late 1800s.

U. S. Steel submits these comments to urge EPA to reconsider the inclusion of iron within the definition of hard rock mining that would be subject to new financial responsibility regulations under CERCLA § 108(b), 42 U.S.C. § 9608(b). As you will see from the following comments, the risk of iron mining is similar to that of categories that were exempted and does not warrant additional financial assurance requirements under CERCLA. Additionally, the only two states with iron ore mining maintain state financial assurance requirements, making the application of a new nationwide federal standard duplicative.

Lack of Risk from Iron Ore Mining to Necessitate Financial Assurance Requirements

A June 2009 EPA memo listed 59 classes of hardrock mining to be excluded from CERCLA § 108(b). Iron ore mining was not excluded, with no rationale given for why it was included. When the 2009 Priority

Notice was published in the Federal Register the public was not given the opportunity to comment on the definition. However, steel industry representatives met with EPA to discuss the listing and why iron ore mining should not be included due to the lack of risk drivers and no history that would necessitate the requirement. The January 11, 2017 Federal Register (FR) publication of the draft rule states the proposed rule "would apply to certain classes of facilities that engage in the extraction, beneficiation, and processing of metals, (*e.g.*, copper, gold, iron, lead, magnesium, molybdenum, silver, uranium, and zinc) and non-metallic, non-fuel minerals (*e.g.*, asbestos, phosphate rock, and sulfur). The FR publication also stated that EPA now "further solicits comment on whether classes of mines identified by commenters as presenting a lower level of risk of injury based on facility characteristics and operations could potentially encompass iron ore, phosphate, and uranium mines."

U. S. Steel urges EPA to determine iron ore was improperly included based on the lack of risk and therefore should be removed from the definition of hardrock mining in the final rule. The minimal environmental risks of the iron ore mining process warrant the exclusion that was provided to other commodities such as sand, gravel and limestone mining.

Iron ore mining is appreciably different from other commodities included in the definition of hardrock mining. Most of the risks EPA identifies in its proposal appear to relate to Iron and Steel Mills (NAICS 331110) not to iron ore mining (NAICS 212210). The activities for U. S. Steel Iron and Steel Mills are conducted not only at different sites, but in wholly separate states than the iron ore operations. Although iron ore mines supply a product to the steel mills (i.e. the blast furnaces), they are not collocated facilities and operate independently of each other. To lump together a separate downstream process when conducting a risk evaluation is inappropriate and was not done with other hardrock mining commodities.

The iron ore pellet making process is very physical in nature, using mainly water, crushing and physical separation by magnets. Iron ore is first mined from large open pits where material is drilled, blasted and then loaded by hydraulic or electric shovels into large production trucks (capable of carrying 240 tons) and transported up to multiple crushing circuits. The large rocks from the pit are crushed into progressively smaller size and then a series of magnets are applied to retain the magnetic fraction. The magnetic iron is then combined with a binding agent, typically bentonite, rolled into small balls and fired in kilns to ultimately become taconite pellets. The pellets are then shipped by rail and then typically boat to their final destination at steel mills.

The geology of the area containing the iron rich ore is quite different than other mineralized ore bodies, and therefore acid mine drainage is not a concern at Minntac or Keetac. Existing regulatory processes are in place to limit the physical size of the open pit and stockpile areas to the extent practicable. Environmental Review is required if a mine seeks an extension over a certain acreage threshold which results in a thorough environmental review of the proposed project and cumulative effects. For wetland permitting, requirements are in regulation to minimize impacts. One way this is accomplished is by stockpiling overburden materials (which cannot be processed into pellets) in areas of the pit where the mineable ore has already been removed. This eliminates the need for additional stockpile area outside of the mine footprint.

U. S. Steel's iron mining operations are both Small Quantity Generators of hazardous waste. Hazardous waste is not treated or disposed of on mining property. U. S. Steel has strict employee health and safety requirements and many chemicals are not allowed to be used on site due to potential health and safety concerns. Minntac and Keetac are both PCB free. The facilities expended considerable resources to

retrofill any remaining transformers and are proud to no longer have PCB transformers on site. The sites are also subject to regulation by the Mine Safety and Health Administration (MSHA). MSHA performs two inspections per year and is essentially on site for half of the year ensuring adherence to proper safety and health regulations and best practices.

No iron ore mining sites are on EPA's National Priorities List (NPL) and no federal government expenditures for CERCLA remediation of iron ore mining sites have occurred. There are multiple examples of iron ore mines that have closed, and are now used for other purposes by the surrounding communities. This includes recreation, as municipal drinking water sources, public beaches, scuba diving, camping, and several are home to Minnesota-stocked trout fishing lakes.

Based on the lack of risk by the iron mining industry, it is inappropriate to include iron in the definition of hardrock mining.

Draft Financial Responsibility Formula and the Potential Impact

EPA estimated the entire hardrock mining industry would be subject to $7 Billion in required financial responsibility based on the draft rule. Using the calculator provided on EPA's website U. S. Steel calculated the estimated financial responsibility requirement for Minntac and Keetac. This would be an initial cost, as the mine pits continue to extend as new areas are moved into to access additional ore. Using EPA's Financial Responsibility Calculator results in over $2.1 Billion of financial responsibility required for Minntac. For Keetac, the calculator results in over $1.2 Billion of required financial responsibility. That means for U. S. Steel alone, almost half of EPA's estimate is already consumed. This estimated responsibility is not in line with historic expenditures, as there have been none, or with the potential CERCLA risk. Although the calculator does have the potential for reductions, all potential options must be in place in order to receive a reduction in that category. For an existing facility to receive a "yes" in all categories is virtually impossible.

When evaluating financial assurance markets, even if the mechanisms are available, the resulting estimated annual costs for U. S. Steel's two iron mining facilities would be $45-50+ Million per year. In a globally competitive market, this high cost cannot be absorbed, especially when the risk does not warrant the requirement. Minntac and Keetac currently employ over 1700 people. Based on a study by the University of Minnesota Duluth Labovitz School of Business and Economics, every job in iron ore mining creates another 1.8 jobs in other industries. The iron ore mines are significant contributors to the economy of the state of Minnesota and the public education system greatly benefits from both the production tax from every ton produced and royalty payments from state lands as they are mined. The production tax goes to local towns and townships, school districts, municipalities, state government and other entities. The premature closure of any iron mining facilities due to the economic hardship of this rule would have devastating effects on Northeastern Minnesota and the entire state would feel the impact.

Blast furnace inclusion

Blast furnace operations that process products from the iron ore mining sector should also be excluded from this proposed new rule. It appears that the proposed rule's definition of "Mineral Processing," read together with the 2009 Priority Notice's characterization of processing, suggests that blast furnace operations may indeed fall under the definition of "mineral processing." Blast furnaces are clearly not associated with iron ore mining facilities, but for the fact that the end product from iron mines are used in blast furnace operations. Minntac and Keetac are operated in Northern Minnesota. After pellets are

produced they are loaded into rail cars and shipped to ports on Lake Superior. They are then loaded into vessels and shipped across the Great Lakes to steel mills in other states such as Indiana, Michigan and Pennsylvania, or even other countries, prior to being utilized in a blast furnace.

Blast furnaces use minimal hazardous substances and produce minimal hazardous waste. What waste they do use or generate is, moreover, already adequately regulated at the state and federal level. Further, the byproduct of blast furnace operations, blast furnace slag, has long had various practical uses ranging from construction of roadways to application as a key ingredient in cement manufacturing. Studies have even demonstrated that blast furnace slag can help neutralize pH levels in soil. There have been no new blast furnaces constructed since the 1960s, and many of those that remain in operation have been modernized, further minimizing any harmful impact they may have on the environment.

Issues with the Financial Responsibility Mechanism Requirements

Although we strongly believe it is inappropriate to include iron in the definition of hardrock mining, we have conducted a review of the proposed financial responsibility mechanisms and requirements. Comments related to this review are included as an appendix to this letter.

Conclusion

Financial assurance is required only to the extent "consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances" from an industrial category. This language calls upon the Administrator to exercise his judgment for each industrial classification, to determine whether *any* financial assurance is required under Section 108(b). Based on the lack of environmental risk the definition of hardrock mining should be revised and iron should be removed from the scope.

Sincerely,

Tishie Woodwell

Appendix A – U. S. Steel Comments on Available Financial Responsibility Instruments

In addition to the comments provided above focused on the applicability of the requirements for financial assurance, U. S. Steel has concerns about the availability of and the requirements for financial responsibility instruments as provide below:

- General - EPA has drawn extensively on the history of financial assurance required by the Resource Conservation and Recovery Act ("RCRA"), but has proposed significant modifications to accepted RCRA practices (such as the proposed modification or elimination of a financial test) while adding unique CERCLA provisions (such as direct 3rd party claims on instrument providers). These modifications will make the implementation of the proposed rule problematic because financial institutions will decide not to participate in the new market for such instruments, or because the cost of the instruments will be prohibitive for the regulated community.

- General - Because EPA personnel who will be required to implement the regulation may not have the financial expertise necessary to properly review and evaluate many of the instruments and the supporting documents, the agency has decided to be proscriptive in the construction of the various instruments, dictating precise language that must be exclusively used in all submittals. Industry experience with RCRA, which attempted to impose similar restrictions, is that banks and other issuing institutions develop language for financial instruments in compliance with extensive financial regulations. Experience has proven that issuing institutions, when faced with language requirements that vary from the commercially accepted language, will either choose not to offer such instruments or to price the instruments at an extreme premium. Any instrument drafted by an issuer subject to commercial regulation should be acceptable for §108(b) purposes.

- General - The EPA has analyzed the market capacity of the issuers and concluded that §108(b) instruments do not adversely affect the capacity. As an example, the agency decided that AIG's decision to withdraw from the pollution legal liability market in January of 2016 will have no negative effect on the overall market. An alternate conclusion is that the market for third party environmental assurance is shrinking and that access to these instruments in the future will be more limited. The limited market will adversely affect the ability of the regulated community's ability to provide financial responsibility.

- Letters of Credit – The three proposed options for Letters of Credit vary greatly from the accepted commercial practices for the issuance of LC's, either in the construction of the LC or the requirement for administrative review to make payments from the LC. None of the proposed options are used in the financial assurance regulations under RCRA.

- Letters of Credit - In the proposed regulation, EPA admits that issuing institutions familiar with the proposed changes have expressed a "strong preference" for a single, named beneficiary and a similar strong preference against allowing direct action against

the issuing institution. The proposed regulation should accept the current commercial practice of single beneficiary LC's with traditional construction as per the issuing institutions' preferred language.

- Insurance – The EPA should allow facilities to obtain policies from captive insurers. Captive insurers are a long established and widely used risk allocation practice and there is little historical evidence to support the dismissal of this method of assurance

- Insurance - Requiring a captive insurer to demonstrate a minimum financial rating from A.M. Best or a comparable nationally recognized statistical rating organization, is problematic as no plans have been made as to what rating is acceptable or who would verify that a rating is in place or the conditions under which a change in rating might be recognized. For the captive insurer, seeking such a rating would be costly and time consuming, as well as duplicative of regulations that already govern captive insurers in the states where they operate.

- Financial Test – Do not eliminate the financial test. The EPA believes that qualification for self-insurance does not provide adequate protection but does not offer proof of the belief. Financial tests have been part of other financial assurance regulations for decades and have served their intended purpose. In general, financial tests vary according to the nature of the liability being regulated (Closure/Post Closure, Underground Storage Tank, Liability). The availability of financial tests has protected the environment and allowed the regulated community to successfully demonstrate assurance.

- Financial Test - The proposed regulation relies too heavily on credit rating thresholds as the defining factor in evaluating a company's financial strength. Looking to other financial assurance regulations, there are alternatives to using credit ratings. In RCRA, one alternative for Closure/Post Closure Care allows the evaluation of specific company financial factors to determine economic viability. The RCRA financial test for Liability also uses financial factors, as does the financial test for demonstrating financial assurance for Underground Storage Tank liability. Consideration should be given to providing an alternative demonstration based on financial factors such as annual sales at or above $2 billion; or total assets at or above of $1 billion; or net worth at or above of $150 million; or at least 50% of asset must be located in the United States. Additional requirements may include that the company must be an SEC registrant, the company CFO provide a representation letter as to finances and a report from an independent accountant verifying the financial factors.

- Trust Fund - The four year "pay-in" period established by §320.1 is shorter than the pay-in period provided in other EPA regulations, such as the practices for landfills under RCRA. The four year deadline should be dropped in favor of a continuing payment into the Trust Fund. The annual pay-in would cease once the Trust Fund contained the full amount of the estimated liability, after which reviews would be performed by the facility every three years to verify that the amount of the fund still reflects the estimated liability.