



**DEPARTMENT OF  
NATURAL RESOURCES**

July 11, 2017

submitted via regulations.gov

The Honorable Scott Pruitt, Administrator  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

Re: Proposed FR Rule Under CERCLA § 108(b) for the Hardrock Mining Industry  
**Docket No. EPA-HQ-SFUND-2015-0781**

Dear Administrator Pruitt:

The Minnesota Department of Natural Resources (MNDNR) submits the following comments on the U.S. Environmental Protection Agency's (EPA's) proposed rule for CERCLA 108(b) financial responsibility requirements for facilities in the Hard Rock Mining Industry (Proposed Rule).

The Proposed Rule is not well-designed to work in concert with the effective regulatory schemes that already exist in several states, including Minnesota. In fact, as written, the Proposed Rule has the potential to create conflicts between state regulatory programs and the EPA. Since 1969, MNDNR has regulated metallic mineral mining operations and reclamation within Minnesota. Minnesota's regulatory program incentivizes the implementation of sound mining practices within the state, thereby substantially decreasing the likelihood of future CERCLA actions at Minnesota's mine sites. Indeed, state law already imposes operational, reclamation, closure, and post-closure requirements on Minnesota's metallic mine permittees.

Minnesota's mine planning, reclamation, and closure requirements are performance-based standards that are carefully developed to address site-specific conditions in order to control the possible adverse environmental effects of mining and encourage good mining practices within the state. The operational controls we impose through permit to mine conditions and in operators' mining and reclamation plans, along with other applicable state and federal regulatory requirements (e.g. dam safety permits and water quality permits), substantially mitigate the risk of potential CERCLA liability. Moreover, mine operators in Minnesota are required to post financial assurance with MNDNR to secure their regulatory obligations. The adequacy and sufficiency of financial assurance is reviewed by MNDNR on an annual basis.

In contrast to Minnesota's site-specific approach, the Proposed Rule takes a formulaic, one-size-fits-all approach to all hardrock mining sites throughout the country. It assumes that Minnesota taconite mines have the same CERCLA risks as uranium in-situ mines and heap leach mines elsewhere in the United States. This formulaic, one-size-fits-all approach relies heavily on the assumption that source control and water treatment are needed at all mines and it uses acreage as a surrogate for CERCLA risk. Such an approach is not appropriate, given the site-specific determinations essential to effectively designing source controls for a specific mine operation. The Proposed Rule fails to adequately recognize that some types of mines present a lower risk than other types, nor is it designed to acknowledge and

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work with the existing regulatory requirements that significantly lessen the risk of hazardous releases or potential CERCLA liability at Minnesota's mine sites. In some instances, the one-size-fits-all approach may overstate risk to a significant degree.

MNDNR notes that its review of the rulemaking docket identified additional inconsistencies and inaccuracies regarding mining operations and regulatory programs in Minnesota. For example, the Regulatory Impact Analysis identifies PolyMet Hoyt Lakes as an active copper mine. In reality, PolyMet currently has several permit applications pending before the state, and the company's proposed project is not operational.<sup>1</sup> Similarly, the Summary of Minnesota Financial Responsibility Requirements implies that the posting of financial assurance is discretionary under the state's reclamation rules. In fact, financial assurance is statutorily required under Minnesota law. See Minn. Stat. § 93.49.

Like other commenting states, MNDNR is concerned about the possible effect of the Proposed Rule on the state's existing regulatory programs. MNDNR understands that the EPA does not intend the Proposed Rule to have negative effects on the state's ability to secure and manage project-specific financial assurance, but the reality may be far different. As a practical matter, the Proposed Rule, with its lack of a sound risk-based approach and failure to acknowledge and integrate with effective state regulatory programs, would needlessly disrupt MNDNR's mine permitting and regulatory oversight in Minnesota.

I appreciate the opportunity to comment on the Proposed Rule. MNDNR would be very pleased to work with EPA to explore possible ways in which a revised rule could enhance, rather than detract from, Minnesota's established and successful framework for protecting both public health and the environment through robust mining regulation.

Sincerely,



Tom Landwehr  
Commissioner

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<sup>1</sup> Document EPA-HQ-SFUND-2015-0781-0501 at A-12.