

To: Jackson, Ryan[jackson.ryan@epa.gov]
From: Nolan, Rich
Sent: Wed 11/29/2017 7:51:54 PM
Subject: AGs Letter
Sign On Ltr to EPA re no action recommendation_11_29_2017.pdf

AGs letter

November 29, 2017

SENT VIA FEDEX (OVERNIGHT)

The Honorable Scott Pruitt, Administrator
United States Environmental Protection Agency
1747 Pennsylvania Avenue, NW
Suite 800
Washington, DC 20006

Dear Administrator Pruitt:

As the chief legal officers of our respective states, we write today to urge the United States Environmental Protection Agency (“EPA”) to publish a “no action” decision on the proposed rule entitled “Financial Responsibility Requirements Under CERCLA 108(b) for Classes of Facilities in the Hardrock Mining Industry,” 82 Fed. Reg. § 3388 (Jan. 11, 2017) by the upcoming December 1, 2017 court ordered deadline. In short, the proposed rule amounts to unlawful executive overreach and is precisely the sort of unnecessary, duplicative, and punitive regulation that President Trump has committed to curtailing.

For many of the undersigned states, the mining sector is a key employer and revenue generator. However, all of the undersigned states care about federalism, the rule of law, and unnecessary economic burdens. According to EPA’s own Regulatory Impact Analysis, this regulation, if adopted, would impose an estimated \$7.1 billion in new financial obligations for affected facilities without creating any new or significant environmental protections. *See* 82 Fed. Reg. at 3392. Further, EPA’s own figures suggest that facilities would incur annual costs of \$171 million. *See* 82 Fed. Reg. at 3393. Numerous stakeholders have warned that such excessive cost burdens will serve to discourage domestic mineral production and industry investment. As a result, indirectly increasing the United States’s reliance on metals and minerals from foreign countries and negatively impacting the local economies of our states, which depend on high-paying mining industry jobs and tax revenue that the sector garners.

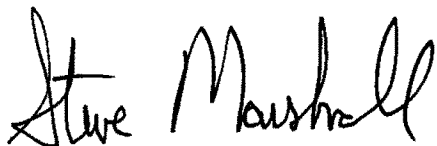
Additionally, the process by which the regulation was proposed was fundamentally flawed and is yet another disturbing example of EPA’s failure to engage in required consultation with states at the rule development phase, a scenario with which we have, unfortunately, become all too accustomed over the past eight years. There is overwhelming evidence in the administrative record that the regulation is unnecessary, duplicative, and potentially impermissibly preempts state regulatory programs, including state mine bonding programs, which already effectively protect against the environmental risks underlying the § 108(b) proposal. Stakeholders ranging from state governors to mining companies to land management

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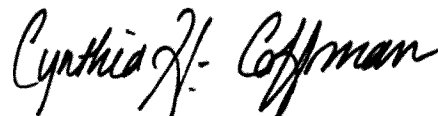
agencies emphasized that the EPA failed to adequately account for existing state and federal programs that have financial assurance components designed to ensure an operator's ability to cover the costs associated with releases or threatened releases of hazardous substances from their facilities at all phases of mining, including reclamation, closure, and post-closure.

The D.C. Circuit was clear in its consent decree that although final action on the financial assurance regulations must be taken by December 1, 2017, EPA may decide, based on the input of stakeholders during the comment period, not to issue a rule at all. *In re Idaho Conservation League*, 811 F.3d 502, 514 (D.C. Cir. 2016) (“[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]’” (alteration in original) (emphasis omitted) (citation omitted)). Based on the foregoing and in the face of overwhelming evidence that the mining industry does not warrant a CERCLA § 108(b) program, we reiterate our request that EPA publish a notice of final action withdrawing the proposed rule.

Sincerely,



Steve Marshall
Attorney General of Alabama



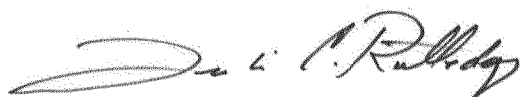
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Cc via US MAIL:

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