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GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
LANSING



C. HEIDI GREYER  
DIRECTOR

July 11, 2017

The Honorable Scott Pruitt, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave, NW  
Washington, D.C. 20460

Dear Mr. Pruitt:

**SUBJECT:** Comments on proposed rule under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Section 108(b) for Facilities in the Hardrock Mining Industry

On behalf of the Michigan Department of Environmental Quality's (MDEQ), Oil, Gas, and Minerals Division (OGMD), I am writing to express concerns regarding the United States Environmental Protection Agency's (U.S. EPA) proposed rule, *Financial Requirements Under CERCLA Section 108(b) of Facilities in the Hardrock Mining Industry*, published in the Federal Register January 11, 2017. Michigan was not consulted in, or informed of, the development of U.S. EPA's proposed rule; however, we appreciate the opportunity to comment at this stage of the process.

The MDEQ agrees that owners and operators of hardrock mining facilities should have sufficient financial assurance to cover future possible cleanup and restoration under CERCLA requirements. However, the MDEQ has concerns over the proposed rule for several reasons, and we recommend that the U.S. EPA reconsider the proposed rule provisions.

The proposed rule does not provide for site-specific or sector-specific considerations. A "one-size-fits-all" approach is not appropriate. Michigan has a long history of properly regulating mines, recognizing the unique nature of not just hard rock mining, but individual mines. For example, the risk at iron mines, regardless of size, is quite low relative to other mines or industrial facilities. There are hundreds of iron mines in Michigan that were reclaimed even before modern environmental regulations that have very little negative environmental impact. Former mining properties are now used for recreational purposes and nature preserves, and some former workings are even used as sources of drinking water for communities.

It appears the proposed rule is based at least in large part on the U.S. EPA's experience with legacy mine problems—i.e., environmental impacts that arose from mining practices that are no longer used nor allowed under current statutes and rules. The proposed rule does not adequately take into account the modern statutory and regulatory requirements that many mining states, including Michigan, have in place. The MDEQ has developed comprehensive rules and policies designed to prevent environmental problems in the hard rock mining industry. Each mine is comprehensively regulated under applicable permitting and monitoring programs.

The Honorable Scott Pruitt

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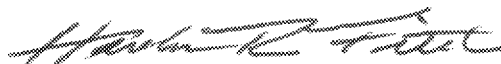
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These include delegated federal programs under the Clean Air Act, Clean Water Act, and Resource Conservation and Recovery Act; and state-level programs under Michigan's inland lakes and streams, wetlands, and mining and reclamation statutes. Michigan's mining statutes and rules incorporate requirements for financial assurance, protective mining practices, proven engineering controls, and reclamation to reduce the degree and duration of risk. Under those statutes, MDEQ staff has authority to increase the amount of financial assurance based on changes to mine plans, geology, hydrology, geochemistry, and waste characteristics. Staff monitor and inspect mining operations on a regular basis to assure compliance. Michigan's financial assurance provisions allow for a site-specific application to address the unique circumstances associated with each individual mine, and Michigan has expert staff that enforce them. No mine sites that are subject to Michigan's modern mining laws have required a CERCLA response.

The MDEQ urges the U.S. EPA to review the proposed rule action in light of the above considerations. It is our belief that most, if not all, states with significant mining activity have adequate provisions to address financial assurance for hardrock mines, and U.S. EPA rules should not preempt or duplicate state requirements. The MDEQ does not believe that additional financial assurance is necessary or justified for hardrock mines in Michigan. To the extent that is true for other states, the U.S. EPA should take a "no action needed" approach. In the alternative, U.S. EPA should coordinate and cooperate with states to address any perceived gaps in financial assurance.

The MDEQ welcomes any opportunity to collaborate with U.S. EPA and other states to engage further on this issue, please contact me at 517-284-6823; [fitchh@michigan.gov](mailto:fitchh@michigan.gov); or at MDEQ, OGMD, P.O. Box 30256, Lansing, Michigan 48909-7756.

Sincerely,



Harold R. Fitch, State Geologist  
and Division Director  
Oil, Gas, and Minerals Division  
Michigan Department of Environmental Quality  
517-284-6823

cc: Ms. C. Heidi Grether, Director  
Ms. Amy Epkey, Environment Deputy Director  
Mr. Michael McClellan, Environment Deputy Director's Chief of Staff  
Ms. Lynn Fiedler, MDEQ  
Ms. Teresa Seidel, MDEQ