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**From:** Andy O'Hare [aohare@tfi.org]  
**Sent:** 12/3/2017 6:43:49 PM  
**To:** Bennett, Tate [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1fa92542f7ca4d01973b18b2f11b9141-Bennett, E]  
**Subject:** Re: EPA Determines Risks from Hardrock Mining Industry Minimal and No Need for Additional Federal Requirements

Tate,

We plan to do so tomorrow. Will copy you.

Andy

On Dec 2, 2017, at 5:16 PM, Bennett, Tate <[Bennett.Tate@epa.gov](mailto:Bennett.Tate@epa.gov)> wrote:

Did you all put out a statement or do any press? If so, can you pass along so I can share with our senior leadership?

On Dec 2, 2017, at 4:00 PM, Andy O'Hare <[aohare@tfi.org](mailto:aohare@tfi.org)> wrote:

Tate,

Great news and thanks for sharing!

Regards,  
Andy O'Hare

On Dec 2, 2017, at 2:59 PM, Bennett, Tate <[Bennett.Tate@epa.gov](mailto:Bennett.Tate@epa.gov)> wrote:

Good afternoon!

Knowing of your interest in this issue, I thought you might be interested in the below announcement from EPA last night. Let us know if you have any questions.

Tate

Elizabeth Tate Bennett  
Associate Administrator for Public Engagement & Environmental  
Education  
Office of the Administrator  
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(202) 564-1460  
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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 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, as well as by examining 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 such 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>