



NEVADA DIVISION OF  
**ENVIRONMENTAL  
PROTECTION**

**STATE OF NEVADA**  
Department of Conservation & Natural Resources  
Brian Sandoval, Governor  
Leo M. Drozdoff, P.E., Director  
David Emme, Administrator

August 17, 2016

Ms. Sonya Sasseville, Director  
Program Implementation and Information Division  
Office of Resource Conservation and Recovery  
Office of Land and Emergency Management  
US EPA Headquarters/William Jefferson Clinton Building  
1200 Pennsylvania Avenue, N.W.  
Mail Code: 5303P  
Washington, DC 20460

Subject: CERCLA 108(b) Financial Assurance for the Hardrock Mining Industry

Dear Ms. Sasseville:

The Nevada Division of Environmental Protection (NDEP) provides this letter as part of the pre-rulemaking federalism consultation for the anticipated EPA rulemaking regarding CERCLA 108(b) financial assurance for the hardrock mining industry. Although EPA has not provided critical detail on the anticipated rulemaking, NDEP has several concerns with the overall basis, process and framework of the pending regulations as described in the brief webinar presentations provided by EPA in 2016. In response to our letter, we request that EPA commit to engaging with state regulators for more substantive and detailed consultation prior to publication of the proposed rule.

The mining industry in Nevada produces many commodities essential to American industry and our national security, including gold, copper, silver, barite, gypsum, lithium, lime, diatomaceous earth, aggregates and molybdenum. The industry directly and indirectly employs over 28,000 Nevadans and is the primary employer in seven of Nevada's 17 counties. As both the driest state in the U.S. and the largest hardrock mining producer, Nevada has a strong interest in a mining regulatory program that protects our precious water resources. The State laws and regulations that Nevada has enacted to regulate mines and mine reclamation are comprehensive and protective.

Since State mining reclamation regulations were adopted in 1990, Nevada has engaged with Federal Land Managers (FLM) to develop mine bonding programs to plan for and assure a productive post-mining land use at mines in Nevada. States and FLMs have decades of experience evaluating mining operations and determining bond amounts. Mine reclamation activities in Nevada are bonded for over \$2.6 billion as of January 2016. NDEP brings this background and experience in managing an effective and efficient bonding program to the discussion about financial assurance requirements for mines.

As stated in its webinar presentations, EPA's overall approach to this rulemaking is premised on a supposed distinction between CERCLA 107 response costs and costs that are required to be included as part of existing State and federal financial assurance requirements for permitted mines. Although details regarding the formula used by EPA to calculate costs have not been provided, we find that EPA's basic premise and approach to this rulemaking is fundamentally flawed and duplicative of existing State programs. Based on NDEP's initial review, there is no substantive difference between CERCLA 107 response costs that may occur at permitted mine facilities and our existing State requirements.

As we have explained during recent work group calls with EPA, NDEP has specifically designed our mining program and regulations to minimize the potential for hazardous substance releases. In the event these releases

occur at permitted mine facilities, both mitigation and financial assurance are then required to ensure these releases are addressed. Nevada financial assurance regulations for mining facilities specifically include approved costs for third parties to perform work on behalf of NDEP in the event the mine owner fails to perform. Beyond financial assurance for standard reclamation of typical mine features (e.g. heap leach pads, waste rock dumps, tailings impoundments), these include costs for process fluid stabilization, waste disposal, and unplanned short and long-term mine impacted water treatment and monitoring (see Nevada Administrative Code 519A.270, 519A.345, and 519A.360.)

Because there does not appear to be a substantive difference between CERCLA 107 response costs and existing Nevada financial assurance requirements, NDEP is very concerned that the forthcoming EPA financial assurance requirements will duplicate or conflict with existing state requirements. Any duplication would cause an undue burden on the State and mine owners, with no additional benefit to the State's environment. This situation may also open up a pre-emption challenge to existing state regulations under CERCLA 114(d) which could be disastrous to effective and protective existing State programs.

In order to address these concerns, NDEP recommends that EPA develop an exemption in the rulemaking for mines that operate within States that have authority to require financial assurance for hazardous substance release response costs. This approach would avoid unnecessary cost and duplication of regulatory programs.

In summary, NDEP has significant policy concerns with the anticipated rulemaking process for CERCLA 108(b) and we concur with the April 20, 2016 Resolution of the Interstate Mining Compact Commission (<http://www.imcc.isa.us/CERCLA%20108b%20Res.pdf>.) More detailed consultation with the States is needed to satisfy federalism concerns and to establish the basis for the scope and necessity of the rulemaking.

We are available to answer any questions or provide further information on this matter. Please contact me at 775-687-9301 or Joe Sawyer, Chief, Bureau of Mining Regulation and Reclamation at 775-687-9397 or [jsawyer@ndep.gov](mailto:jsawyer@ndep.gov).

Sincerely,



David Emme, Administrator  
Nevada Division of Environmental Protection

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