

THOUGHT LEADERSHIP**Services**

Environmental
Mining & Minerals

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EPA Abandons CERCLA Financial Responsibility Rule for Mining Industry – Chemical and Energy Sectors Up Next

In a major reversal of Obama-era policy, the U.S. Environmental Protection Agency (EPA) announced on December 1, 2017, that it will not issue final regulations under CERCLA Section 108(b) imposing financial responsibility requirements on the hardrock mining industry. After carefully evaluating public comments, statutory authority and the extensive record, EPA said it had concluded that the proposed rule was unnecessary and unduly burdensome.

The stakes of the proposed rule were high. It was estimated the financial responsibility requirements would require the mining industry to secure \$7 billion in financial assurance at a cost of \$111 million to \$171 million per year. This would have severely impacted the mining industry in the United States.

Stakeholders in the mining industry joined together to submit detailed comments explaining the minimal environmental risks of modern mining practices and the ways in which existing risks are already covered by state and federal (Bureau of Land Management and Forest Service) mine reclamation bond programs. They argued that the proposed rule would impose financial requirements that were duplicative and burdensome. As part of this effort, attorneys on Husch Blackwell's Environmental team helped mining industry clients evaluate the potential impact of the proposed rule and submitted specific comments on behalf of clients.

Chemical Manufacturing and Energy Sectors Up Next

EPA next will analyze the need to develop CERCLA Section 108(b) requirements for three additional industry sectors – chemical manufacturing

(NAICS 325), petroleum and coal products manufacturing (NAICS 324) and electric power generation, transmission and distribution (NAICS 2211).

Under a January 2016 consent order, EPA is required to publish a notice of proposed rulemaking in the Federal Register for one of these industries by July 2, 2019, and publish a notice of its final action by December 2, 2020. As with hardrock mining, EPA is not required to determine that financial assurance is required for these industry sectors and has not indicated the order in which the industry sectors will be reviewed.

What This Means to You

EPA will soon publish notice of its decision not to issue a final rule for hardrock mining in the Federal Register. Environmental groups may attempt to challenge EPA's decision, but given the agency's broad discretion under the statute, they will face an uphill battle.

Although the chemical manufacturing, oil, coal and electric power sectors should benefit from the precedent set for the mining industry, businesses in those industries will want to engage with EPA at the earliest opportunity to voice their opinions.

Contact Us

For more information on how financial responsibility rules may impact your business, please contact Jason A. Flower or Robert F. Wilkinson of Husch Blackwell's Environmental team or your Husch Blackwell attorney.