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July 10, 2017

U.S. Environmental Protection Agency
Office of Resource Conservation and Recovery
via <http://www.regulations.gov>

Attention: Docket No. EPA-HQ-SFUND-2015-0781

Dear Sir/Madam:

On behalf of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO), I would like to submit the following comments and concerns on the proposed rule for Financial Responsibility Requirements Under CERCLA §108(b) for Classes of Facilities in the Hardrock Mining Industry (the proposed rule), published in the Federal Register on January 11, 2017.

ASTSWMO is an association representing the waste management and remediation programs of the 50 States, five Territories and the District of Columbia (States). Our membership includes State waste program experts in the management and regulation of solid and hazardous waste.

ASTSWMO's comments are focused on aspects of the proposed rule relevant to solid and hazardous waste programs. We note that individual State or Territorial waste programs may also submit comments to the U.S. Environmental Protection Agency (EPA) based on their State program perspectives and experiences. We further recognize that our State colleagues who regulate and administer hardrock mining programs may also provide EPA with their views on the broader issues raised in the proposed rule.

EPA has worked very hard to address the many very difficult issues that have emerged around this rule. And it is clear that EPA has made a concerted effort to deal with our principal issue – the preemption of State financial assurance requirements.

We compliment EPA's efforts to deal with preemption concerns through the reductions proposed in §§320.63(c) and (d) of the proposed rule. This is a good approach and may allow EPA to avoid preemption of State requirements if it is used as we think it is intended to be used. We also support the "partial program deferral approach" as that is discussed in the preamble on page 3469. ASTSWMO strongly believes EPA should grant explicit nation-wide programmatic deferrals, as follows:

- a. EPA should grant a program deferral for the RCRA Subtitle C Hazardous Waste Permitting Program as implemented by EPA or authorized States. EPA can assume that EPA staff and authorized States are effectively regulating all hazardous waste management units/components at all hardrock mining facilities. Effective regulation in this case would mean that each unit or component is 1) being safely operated under a permit or other enforceable document, 2) periodically inspected for continued compliance, and 3) adequately covered by financial assurance to close the unit at the end of its operating life and safeguard the unit through any necessary post-closure period.

- b. Using the same logic, EPA should grant a program deferral for the RCRA Subtitle C Hazardous Waste Corrective Action Program as implemented by EPA or authorized States. EPA can assume that all releases of hazardous waste at hardrock mining facilities are effectively regulated which includes adequate financial assurance to complete any ongoing corrective actions at the facility from past waste releases.
- c. EPA should grant a program deferral for the RCRA Subtitle D Part 258 municipal solid waste (MSW) landfill permit program as implemented by approved States. EPA has determined that approved State MSW landfill permit programs are equivalent to RCRA Subtitle D. EPA can assume that the States are effectively regulating all solid waste management units/components and activities at any hardrock mining facility using the same definition of “effective regulation” used in paragraphs 1.a and 1.b above.

We see no disadvantages to the partial program deferral approach for these programs. EPA needs to continue to have faith in its own solid and hazardous waste regulatory programs and in those programs’ ability to conduct oversight of their State counterparts. EPA also should remain confident that approved and authorized State solid and hazardous waste regulatory programs can and will keep these facilities in compliance with all solid and hazardous waste requirements including financial assurance requirements. Where EPA has the advantage of fully-operational, mature, and well-run regulatory programs in place that cover some of the same financial assurance intent of this proposed rule, deferral to those programs must be accomplished.

We agree with all of the potential advantages of the partial program deferral approach listed by EPA on page 3469 in the preamble. In addition, affected facilities could enjoy substantial cost and program implementation savings. EPA would also be able to implement a more streamlined and efficient CERCLA 108(b) program. We believe deferral of the solid and hazardous waste program should be a long-term component of the CERCLA 108(b) requirements. Making it a short-term or temporary mechanism does not ameliorate preemption concerns.

Lastly, ASTSWMO is concerned about the uncertain results of the Market Capacity Study that EPA conducted. Specifically, we are concerned that, if these new CERCLA 108(b) requirements tighten the available market too much, the cost of obtaining adequate financial assurance to meet other programs’ existing obligations may become much more expensive or even unavailable. EPA must consider how this will be handled should it occur.

If you have any questions regarding these comments, please contact Kerry Callahan in the ASTSWMO office at 202-640-1062 or kerryc@astswmo.org.

Thank you for allowing us to submit these comments. We again applaud your efforts in preparing the proposed rule.

Sincerely,



Mark de Bie (CA)
ASTSWMO President