



John W. Suthers
Attorney General
Cynthia H. Coffman
Chief Deputy Attorney General
Daniel D. Domenico
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW

**Natural Resources and
Environment Section**

Ralph L. Carr
Colorado Judicial Center
1300 Broadway, 7th Floor
Denver, Colorado 80203
Phone (720) 508-6000

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Nick Abraham
Legislative Clerk
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington DC 20515

RE: Additional information for the record

Dear Mr. Abraham:

This letter is my response to the request for additional information contained in the June 12, 2013 letter to me from Chairman Shimkus.

The Honorable John D. Dingell

“Relating to the amendments in section 108 of CERCLA, how many States have promulgated the financial responsibility requirements?”

I'm not sure which “financial responsibility requirements” this question refers to. CERCLA § 108(b) directs the Administrator of the Environmental Protection Agency to promulgate regulations requiring “that classes of facilities establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances.” The proposed amendments would add a sentence to CERCLA § 108(b) stating “[t]he requirements promulgated by the President under this paragraph shall not preempt any State financial responsibility requirements in existence on the effective date of the requirements promulgated by the President.” At the hearing, I had indicated that a number of states had promulgated financial responsibility regulations that could be preempted by rules that EPA promulgates under CERCLA §108(b).

My understanding is that most states view CERCLA §108(b) as directing EPA to promulgate rules requiring facilities to maintain financial responsibility against the costs of responding to a release of hazardous substances. However, states are concerned that EPA may view its authority more broadly to encompass financial assurance requirements for preventive measures as well as response. For example, the RCRA financial assurance requirements provide funding to cover the

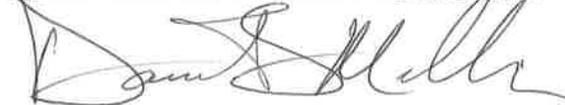
cost of properly closing regulated units at a hazardous waste treatment, storage or disposal facility, and for completing corrective action for existing releases of hazardous wastes or constituents. Any state authorized to implement state hazardous waste programs in lieu of RCRA would have equivalent financial assurance requirements under their own laws. *See, e.g.*, 6 CCR 1007-3, §§ 264.90(a)(2), 264.101(b); Part 266. And some states, including Colorado, have financial assurance requirements to cover the costs of reclaiming mining sites. *See, e.g.*, § 34-32-117, C.R.S. I do not have a complete list of states with mining reclamation financial assurance requirements, but I do know that Alaska, Arizona and New Mexico have such requirements.

Financial assurance mechanisms for RCRA closure and mining reclamation are aimed at prevention of releases of hazardous substances, as opposed to providing funding to address response to a release that has already occurred. States with robust financial assurance requirements for such preventive measures are concerned that EPA may promulgate rules under CERCLA §108(b) that would pre-empt these state requirements, even if the state's requirements were more stringent than what EPA proposes.

Assuming that your question refers only to requirements for financial mechanisms to cover the costs of responding to a release of hazardous substances, and not to state financial assurance requirements addressing preventative measures like RCRA closure or mining reclamation, I can speak definitively only with respect to Colorado. Colorado has not adopted any requirements that would provide funding to cover the costs of responding to a release of hazardous substances for any class of facility. As far as other states go, I am not aware of any that have adopted such requirements, although I have not conducted any sort of survey of state requirements in this area.

Sincerely,

FOR THE ATTORNEY GENERAL



DANIEL S. MILLER
SENIOR ASSISTANT ATTORNEY
GENERAL

dan.miller@state.co.us

720-508-6294 (T)

720-508-6039 (F)