

By Email

May 22, 2013

The Honorable John Shimkus
Chairman
Subcommittee on Environment and the Economy
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Paul Tonko
Ranking Member
Subcommittee on Environment and the Economy
Committee on Energy and Commerce
2322A Rayburn House Office Building
Washington, DC 20515

Re: Opposition to the draft bill, the “Reducing Excessive Deadline Obligations Act of 2013”.

Dear Mr. Shimkus and Mr. Tonko:

The undersigned public interest groups write to express opposition to the “Reducing Excessive Deadline Obligations Act of 2013,” which would protect polluters from liability for the full costs of toxic cleanup. The bill would amend the Resource Conservation and Recovery Act (RCRA) and Superfund (the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)) in a manner that increases the potential for harm to human health and the environment.

The bill would amend RCRA to delay regulation of the second largest toxic waste stream in the nation, harming thousands of communities across the country and the Commonwealth of Puerto Rico that are facing water contamination, fugitive dust, and the risk of catastrophic collapse of ash impoundments. The bill would eliminate the basis for a lawsuit where public interest and industry plaintiffs are seeking regulatory certainty and a reasonable timeline for the EPA to establish safeguards for coal ash disposal. Regulation of toxic coal ash is long overdue, and the EPA has acknowledged that “it has an obligation to conclude review, and any necessary revision, of certain regulations within 40 C.F.R. Part 257 pertaining to coal combustion residuals.”¹

Regarding Superfund, the bill would weaken this crucial law by allowing insufficient state requirements to preempt federal rules, thereby leaving communities unprotected and taxpayers at risk of funding expensive cleanups. Failure to ensure full liability for cleanup will endanger the health of communities and their environment, cause significant delays in cleanup, and place great burden on taxpayers to cover the shortfall, which is often substantial, particularly at hardrock mine sites.

Many states don’t have the capacity to manage clean-up activities at major mines if the company fails or is unable to complete reclamation and closure. As a result, the federal government often inherits these mines under CERCLA. Of 1,635 sites on the 2007 CERCLA National Priorities List of “Superfund” sites, 7% are mining and/or smelting sites, yet 21% of the Superfund budget (\$2.4 billion) was spent on mining.²

¹ EPA’s Combined Opposition to Plaintiffs’ Motions for Summary Judgment, and Memorandum in Support of EPA’s Cross-Motion for Summary Judgment in Case Nos. 1:12-cv-00585 and 1:12-cv-00629, and for Partial Summary Judgment and Order to Govern Further Proceedings in Case No. 1:12-cv-00523, No. 1:12-cv-00523 (filed October 11, 2012).

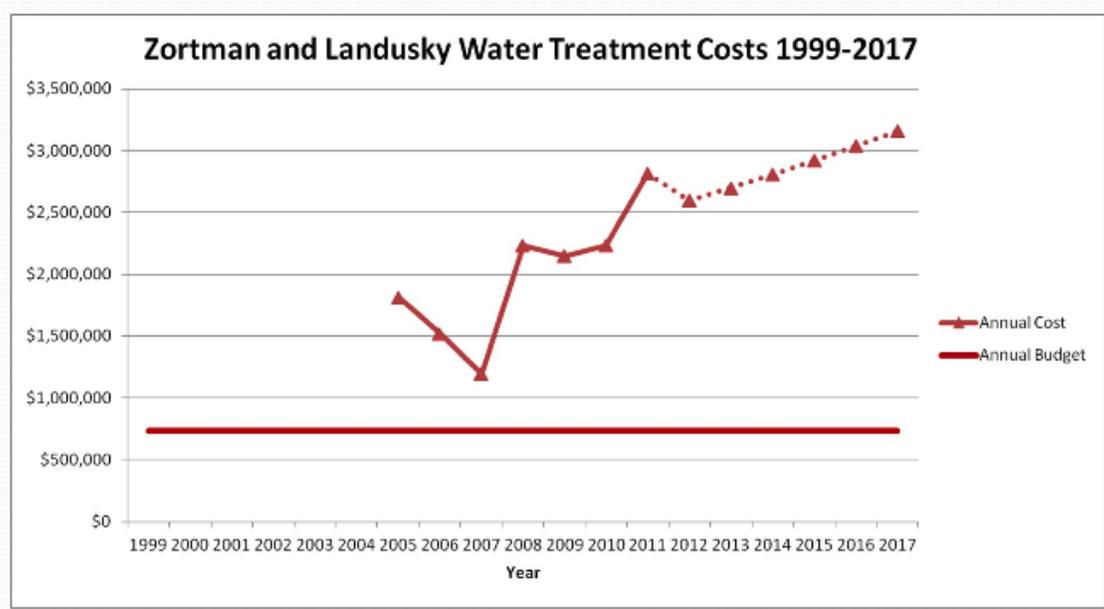
² U.S. EPA, The CERCLA Financial Responsibility Initiative, power point presentation by Ben Lesser, 2010.

Reports by the non-partisan Government Accountability Office (GAO) in 2006 and 2011 document the inadequacy of financial assurance at hardrock mines in the U.S., and recommend that the federal government do more, not less to protect taxpayers.³

Financial assurance requirements for cleanup at mine sites vary considerably from state to state. Exemptions and gaps in state laws put federal taxpayers at significant financial risk because they fail to ensure that sufficient financial assurance is in place to cover mine reclamation and closure costs. Inadequate state financial assurance requirements for hard rock mining are the norm, not the exception. For example, bonding shortfalls and their consequences are briefly described below for three western states:

- **Montana: Inadequate state bonding statute results in inadequate bonds and significant taxpayer liability**

In practice, many federal agencies currently defer to states for financial assurance on hardrock mines via a memorandum of understanding. This has repeatedly resulted in inadequate financial assurance and significant costs to taxpayers. For example, in Montana, the Zortman Landusky mine is located on a mix of federal and private land. The federal agencies deferred to the State of Montana to calculate and hold the reclamation bond.



Federal taxpayers are paying water treatment costs at the Zortman Landusky mine, where the company filed for bankruptcy, and the reclamation bond was grossly insufficient.

The Zortman Landusky Mine in north central Montana has developed severe acid mine drainage, which will require costly water treatment in perpetuity. The reclamation bond was grossly insufficient to cover costs. As of 2009, the U.S. Bureau of Land Management has spent over \$10 million for water treatment, while the State of Montana had spent approximately \$3 million. The annual cost of water treatment has continued to increase, far beyond the calculated cost in the surety bond (see attached diagram). In 2011, a storm resulted in the release of over 50 million gallons of acid mine drainage downstream, and the failure of a seepage

³ GAO, “Environmental Liabilities: Hardrock Mining Cleanup Obligations, Testimony before the Committee on Environment and Public Works, U.S. Senate, June 2006. GAO, “Abandoned Mines: Information on the Number of Hardrock Mines, Cost of Cleanup and Value of Financial Assurances, Testimony before the Subcommittee on Energy and Mineral Resources, Committee on Natural Resources, July 2011.

collection system, which has increased impacts to water supplies and the cost of cleanup.⁴ Similarly, the State of Montana collected insufficient financial assurance to cover the cost of long-term water treatment at the Beal Mountain Mine, which is located on federal and private land in western Montana. The \$6.8 million reclamation bond calculated by the State has been spent. As of 2012, \$18 million in state and federal funds have been expended, primarily consisting of federal funding. Yet the Forest Service estimates cleanup and water treatment costs at over \$30 million, which will be borne by taxpayers, not the mining company.⁵

- **Idaho: Exemption for underground mines and cap on bonds for all surface mines.**

Underground mines in Idaho are exempt from reclamation and financial assurance requirements under the Idaho Surface Mining Act. Yet, underground mines can cause substantial damage to water quality.

Further, the State of Idaho also puts an artificial cap of \$2,500 per affected acre for financial assurance for most surface mines, without Board approval.⁶ Yet, mines with acid mine drainage or metals leaching may require water treatment for centuries, or in perpetuity, generating water treatment costs in the \$20,000-\$100,000 per acre range,⁷ resulting in a substantial shortfalls for taxpayers.

- **Utah: Exemption for active mines that predate state bonding regulations**



2013 landslide at Bingham Canyon pit.

The State of Utah contains a broad grandfather clause that exempts “historic” mines from state bonding requirements, if mining at the site pre-dated Utah’s financial assurance requirements. This exemption has potentially far-reaching and disastrous results for taxpayers and the environment. For example, the immense pit at the Brigham Canyon Mine is exempt from bonding requirements because of its “historic site” status, even though it is still an active mining operation. Consequently, the largest open pit mine in North America is largely exempt from bonding. The recent pit failure (see photo) at the Brigham Canyon Mine demonstrates the substantial financial liability should the company fail to conduct adequate reclamation.

Thus, in order to protect taxpayers and the environment, any preemption clause would have to include a determination that applicable state requirements are as stringent as the federal requirements.

Further, because scores of unreclaimed and polluting mining sites are continuing to take a high economic and environmental toll, we vigorously support the reinstatement of lapsed Superfund taxes to provide a stable, dedicated revenue source for the Superfund program. Only with the reinstatement of such

⁴ Warren McCullough & Wayne Jepson, Zortman: Dealing with Extreme Storm Events, power point presentation by Montana Department of Environmental Quality, presented at the Montana Tech 2012 mining conference: www.mtech.edu/mwtp/conference/2012.../Warren%20McCullough.pdf

⁵ http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5183264.pdf

⁶ <http://www.legislature.idaho.gov/idstat/Title47/T47CH15SECT47-1512.htm>

⁷ Jim Kuipers, P.E., Putting a Price on Pollution, 2004. Available at <http://www.earthworksaction.org/files/publications/PuttingAPriceOnPollution.pdf>

taxes, paid for by the industries responsible for toxic pollution, will the protection of health and environment be safeguarded and American taxpayers protected.

Respectfully,

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