

# Commonsense Regulation that Recognizes Existing State and Federal Protections

## FINANCIAL ASSURANCE

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The U.S. Environmental Protection Agency's (EPA) 2017 decision not to impose additional financial responsibility requirements on hard rock mining under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) acknowledges the robust existing federal environmental, reclamation, post-closure and financial assurance requirements already in place at the state and federal levels.

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**“Modern, advanced mining practices – coupled with existing state and federal environmental and financial assurance requirements – comprehensively cover the same risks contemplated under the CERCLA program.”**

*– Hal Quinn, NMA President and CEO, commenting on the EPA's December 2017 announcement that additional requirements were not needed.*

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Robust environmental and financial protections already exist:

- Today, no new mines can be approved under either existing state or federal laws and regulations without first furnishing financial assurance to ensure cleanup funds are available if the company goes bankrupt. Fourteen mining states alone hold more than \$6 billion in financial assurances.
- Since 1990, zero mines approved by the federal land management agencies have become a taxpayer liability under Superfund.
- Today, mines are designed, built, operated and closed using state-of-the-art environmental safeguards and technology that minimize releases of hazardous substances to the environment during and after an operation ceases production.
- Federal and state laws already exist that apply to mining operations – from exploration through mine reclamation and closure – that provide comprehensive controls, minimizing a mining project's environmental footprint.

Congress enacted CERCLA in 1980 to address threats to human health and the environment posed by past waste disposal practices. CERCLA is both a backward- and forward-looking statute, intended to address remediation of existing sites and prevent the creation of new ones. In the decades that followed its enactment, state and federal environmental, reclamation, and associated financial assurance programs were developed and implemented to address the very same risks contemplated by CERCLA's financial responsibility provisions.

In 2014, several environmental groups sued the EPA to compel agency action, attempting to use CERCLA to subject classes of facilities within the hard rock mining industry to additional financial responsibility requirements. As a result, EPA conducted a rulemaking to determine if new requirements were needed.

In 2016, EPA released a proposal premised on a faulty picture of the mining industry that relied on decades- and even generations-old legacy practices that are not representative of today's mining and mineral processing industry. In sum: the proposal addressed conditions that no longer exist or are already remedied under other comprehensive regulatory programs. The EPA ultimately rejected the flawed proposal, rightly determining that a new financial responsibility program was not needed. This final action is consistent with the court's order.