

# United States Senate

WASHINGTON, DC 20510

January 16, 2018

The Honorable Scott Pruitt  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Dear Administrator Pruitt:

We write to express our serious disappointment with your decision to not issue federal financial responsibility requirements for hard rock mining operations in the United States. The EPA has allowed the mining industry to make empty promises about securing bonding and other financial assurances for nearly forty years while at the same time shifting the burden and costs for hazardous waste cleanup to the American taxpayers. By conjuring up the baseless determination that there is no risk of taxpayer funded cleanups from hard rock mining and therefore not requiring assurances, you are assuring that we will continue to create high-cost environmental disasters. These risks are man-made and completely avoidable with common-sense rules which were envisioned and mandated by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The 2015 Gold King Mine spill that released three million gallons of acid mine drainage into the Animas River is an ever-present reminder of the impacts of these high-cost disasters.

Since the enactment of CERCLA, the EPA has failed to meet its legal obligations to classify mines as facilities that pose significant risks for creating toxic sites and environmental pollution. The EPA was finally compelled by two lawsuits to identify hard rock mining as a high-risk industry requiring financial assurance, issue the priority notice in 2009 and a draft rule in 2016. The proposed rule was released December 1, 2016 under section 108(b) of CERCLA would have required reasonable and prudent financial responsibility requirements for the mining industry in order to mitigate the substantial risks associated with modern production, transportation, treatment, storage, and disposal of hazardous substances created and used during mining. EPA's failure to require financial assurances from the hard rock mining industry has contributed to over \$50 billion in remediation costs while funding for the Superfund program continues to shrink.

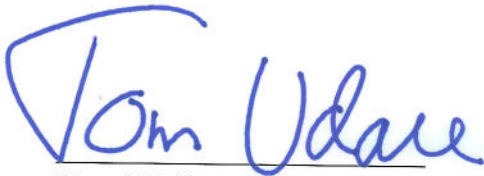
Congress was clear when it created CERCLA that polluters should bear the responsibility for cleaning up hazardous wastes and companies must prove up-front that they have the funds to cover the cleanup costs, including unanticipated spills and accidents. Many mining operations are owned by multi-national corporations headquartered outside of the U.S. and the mining industry is notorious for filing for bankruptcy, leaving the American taxpayers on the hook. Providing liability

shielding for companies who have created thousands of hazardous waste sites across America contravenes Congress' intent of "polluter pays."

There are estimates of as many as 500,000 abandoned hard rock mines in our nation that expose people and wildlife to hazardous wastes, creating \$20-54 billion dollars in remediation costs for all hard rock mines. Hard rock Mining is the leading source of hazardous materials production and release in the U.S. EPA's unreasonable delay in complying with their legal duty under CERCLA section 108(b) continues a shameful pattern of protecting mining industry profits at the expense of the environmental and human health of American citizens. EPA's own estimates show that the rules would prevent over \$500 million in costs to the federal taxpayer, and that the DC Circuit held that "the lack of financial assurance requirements causes mine operators to release more hazardous substances than they might if such financial assurance requirements were in place...[a]t the very least, this limits the incentive to adopt best practices, and in some circumstances may encourage operators to take on greater risks knowing they will never have to pay the costs."

We strongly urge you to reconsider your decision and issue a final rule that satisfies the requirements of the D.C. Circuit's court order including finalizing the financial responsibility requirements for hard rock mining facilities, and make a determination on new rules for the other high-risk industry classes identified by EPA: chemical manufacturing, petroleum and coal products manufacturing, and electric power generation, transmission and distribution industries.

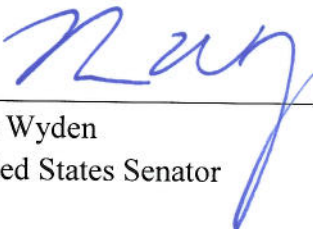
Sincerely,



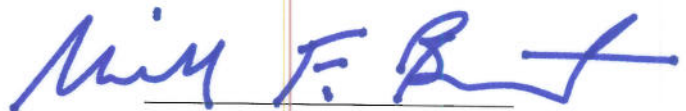
Tom Udall  
United States Senator



Richard J. Durbin  
United States Senator



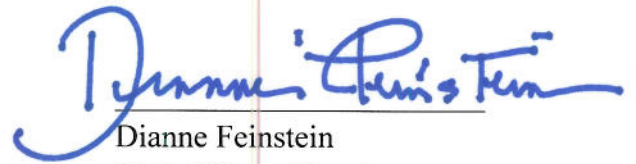
Ron Wyden  
United States Senator



Michael Bennet  
United States Senator



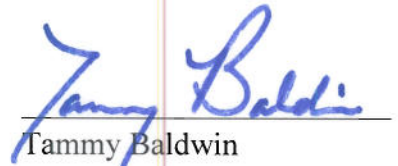
Sheldon Whitehouse  
United States Senator



Dianne Feinstein  
United States Senator



Bernard Sanders  
United States Senator



Tammy Baldwin  
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