

**Congress of the United States**  
Washington, DC 20515

February 17, 2017

Ms. Catherine McCabe  
Acting Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Mr. Kevin Minoli  
Acting General Counsel  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Mr. Donald Benton  
White House Liaison  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Dear Acting Administrator McCabe, Mr. Minoli, and Mr. Benton:

Under section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Environmental Protection Agency (EPA or the Agency) on December 1, 2016, signed proposed requirements on the hardrock mining industry for demonstrating financial responsibility. The Proposed Rule, "Financial Responsibility Requirements Under CERCLA §108(b) for Classes of Facilities in the Hardrock Mining Industry," was published in the Federal Register on January 11, 2017 (82 Fed. Reg. 3388). In the Proposed Rule EPA established a 60-day comment period which ends on March 13, 2017. We write to request an extension of that deadline.

The Committees on Energy and Commerce and Transportation and Infrastructure have jurisdiction over CERCLA and the Committee on Natural Resources has jurisdiction over laws that impact the hardrock mining industry. All of the Committees have a direct interest in the Proposed Rule.

We write to request a minimum 120-day extension of the deadline to submit comments, or at least until July 10, 2017. The Proposed Rule is a significant rulemaking that will have a considerable impact on the mining industry. EPA's Regulatory Impact Analysis estimates that the financial responsibility amount for the regulated industry is \$7.1 billion. Furthermore, the

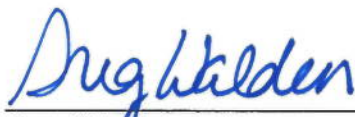
Proposed Rule is extremely technical, the rulemaking docket contains over 200,000 documents, and the proposal includes a complex statistical model that EPA developed to calculate financial assurance obligations.

Despite numerous Congressional requests during the process of preparing the Proposed Rule, EPA declined to share critical information about the development of the statistical model with Congress, the States, the regulated industry, and other stakeholders. As such, the statistical model for calculating financial assurance – which is the crux of the rule – was developed by EPA with no input from States, industry experts, or stakeholders. The rulemaking docket has quadrupled since the Proposed Rule's publication date and now contains over 2,300 technical documents to support the Proposed Rule. It is obvious that the 60-day comment period set by EPA is wholly inadequate to evaluate the proposal and the voluminous supporting information and to prepare meaningful public comments.

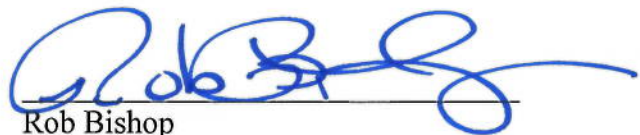
While we recognize the importance of financial assurance, we are especially concerned about the transparency of the process and that EPA failed to adequately seek public input during preparation of the Proposed Rule and in particular, the statistical model. We are also particularly concerned about whether EPA sufficiently considered the issue of preemption and whether the 108(b) rule is duplicative of existing federal and state programs. We understand that EPA compiled summaries of all 50 states' mine bonding requirements to get a general understanding of the types of requirements applicable under other programs and that EPA made assurances that key documents would be made available in the docket. Notably, EPA put the summaries in the docket this week – almost a month after the start of the 60-day comment period.

We understand that EPA is currently under a court order in the U.S. Court of Appeals for the District of Columbia Circuit to finalize a rule by December 1, 2017. However, the Court's order explicitly allows EPA to request an extension of deadline to finalize the rule. In August, 2016 Chairman Upton and Chairman Bishop requested that EPA slow down the rulemaking process in order to allow meaningful public participation. EPA refused and published the Proposed Rule in December, 2016 according to the Court's original deadline. We hereby reiterate the request that EPA seek leave of the Court to extend the December 1, 2017 deadline to promulgate a final rule. We also request that in the meantime, EPA extend the comment period on the Proposed Rule until at least July, 10, 2017. Thank you for your prompt response to this request.

Sincerely,



\_\_\_\_\_  
Greg Walden  
Chairman  
Committee on Energy and Commerce



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Rob Bishop  
Chairman  
Committee on Natural Resources



Bill Shuster  
Chairman  
Committee on Transportation and  
Infrastructure

cc: The Honorable Frank Pallone, Jr., Ranking Member  
Committee on Energy and Commerce

The Honorable Raúl M. Grijalva, Ranking Member  
Committee on Natural Resources

The Honorable Peter A. DeFazio, Ranking Member  
Committee on Transportation and Infrastructure

Attachment