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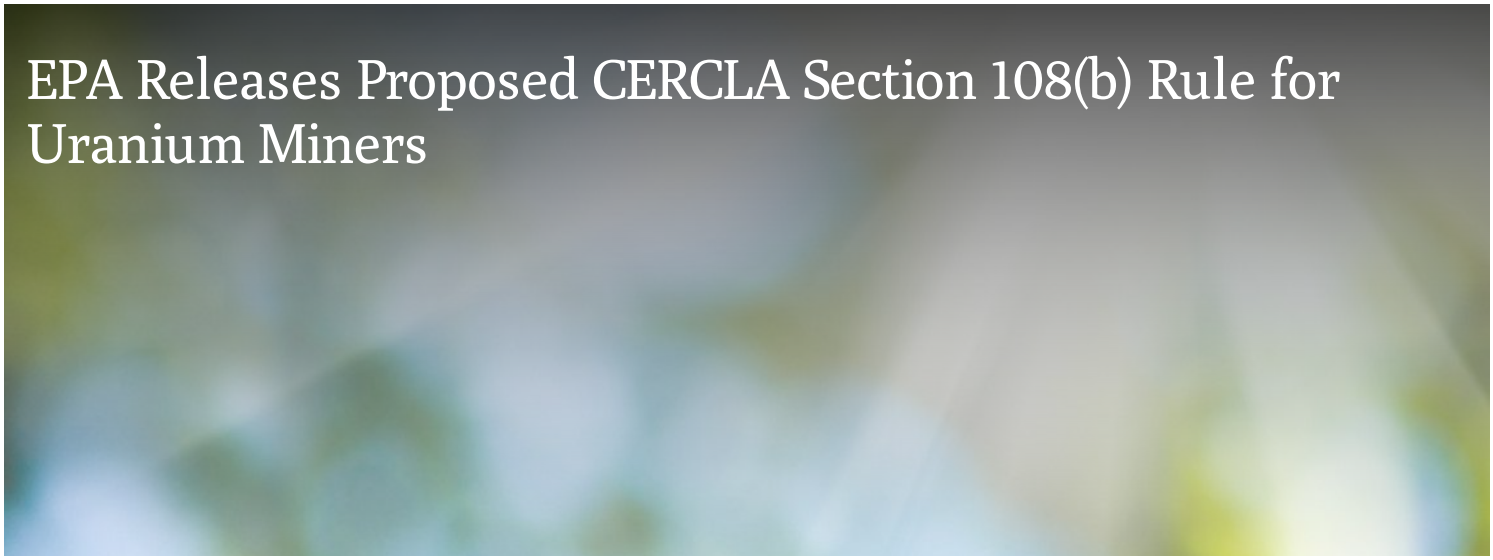
BLOG

EPA Releases Proposed CERCLA Section 108(b) Rule for Uranium Miners



JANUARY 18, 2017

On January 11, 2017, EPA released a proposed rule entitled *Financial Responsibility Requirements under CERCLA § 108(b) for Classes of Facilities in the Hardrock Mining Industry*. The proposed rule would impose financial responsibility requirements on owners and operators of hardrock mining facilities, along with various recordkeeping and notification requirements. If finalized as proposed, the rule would apply to in-situ uranium mines, as it specifically references in-situ solution mining and extraction of mineral-bearing groundwater brines. The rule has been a long time in the making, but the benefits are far from clear—particularly in light of the potentially significant costs.

Section 108(b) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, or Superfund) gives EPA the authority to require that classes of facilities establish and maintain evidence of financial responsibility. In July 2009, EPA identified certain hardrock mining and mineral processing facilities as its first priority for the development of financial responsibility requirements under CERCLA section 108(b). In August 2014, several groups filed a mandamus action seeking to compel EPA to issue CERCLA § 108(b) financial assurance rules for the hardrock mining industry. EPA and the parties reached agreement on a court-ordered schedule that calls for EPA to publish a final rule by December 1, 2017.

The proposed rule would require mining facilities to demonstrate financial responsibility in an amount determined by a formula that considers several factors, including whether open pits, process ponds, waste rock, and other features are present at the facility, along with estimated water treatment and operation and maintenance costs. The proposed rule would allow affected facilities to demonstrate financial responsibility through a variety of instruments, including a letter of credit, surety bond, insurance, or trust fund. EPA is also evaluating whether to allow financial responsibility to be demonstrated through a parent or self-guarantee, subject to a financial test. As proposed, affected owners and operators would be required to demonstrate financial responsibility for the amount of the health assessment cost component 24 months after the final rule is published; fifty percent of the response and nature resource damages cost components 36 months after the final rule is published; and the full response and nature resource damages cost components 48 months after the final rule is published.

The financial responsibility requirements under the proposed rule would apply in addition to other financial responsibility requirements imposed under other federal laws. The proposed rule therefore would impose additional financial responsibility requirements on top of those already required by the NRC. This seems unnecessary, given the absence of any examples of off-site releases from in situ uranium mines. It also ignores the NRC's

comprehensive licensing and restoration scheme, which already requires operators to maintain sufficient financial assurance to pay a third-party to complete restoration at any point during the in situ mine's life.

While some Congressional members, including Senators David Vitter (R-LA) and James Inhofe (R-OK), have expressed reservations regarding the proposed rule and the change in Administration may result in some changes to the rule or delay in its issuance, the court order requiring EPA to issue a final rule by December 1, 2017, remains in effect. Comments on the proposed rule are due by March 13, 2017.
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