

United States Senate

WASHINGTON, DC 20510

August 23, 2016

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator McCarthy,

We would like to bring to your attention concerns related to an upcoming proposed rule regarding financial responsibility for hard rock mining under section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). We have a number of questions with the forthcoming rule and the process used to develop it. As such, we urge you to file an extension and work with the State of Arizona to ensure the proposed rule does not undermine financial responsibility programs already in place in the state.

Arizona has a long history of hard rock mining and the industry plays a key role in the state's economy. Arizona also has strong environmental protections in place to ensure mining in the state is conducted in a responsible manner. Robust financial assurances regulations already exist under the Aquifer Protection Permit Program, the Arizona Mined Land Reclamation Act, and regulations governing leases for hard rock mining on state land. Arizona's environmental regulators and miners are rightly concerned about the possible preemption of these Arizona programs.

As we understand it, Misael Cabrera, the Director of the Arizona Department of Environmental Quality (ADEQ), sent the EPA Office of Conservation and Recovery a letter (attached) on August 17, 2016 concerning this very issue. In the letter Director Cabrera requests the EPA file for an extension from the court in order to better consult with the states. ADEQ also extends an offer of assistance to test the new rules and suggests several options to address potential preemption. We urge you to follow their request for an extension and accept their offer of assistance on this troublesome rule. We thank you in advance for your continued time and attention to these issues. As always, we ask that this matter be handled in strict accordance with all applicable agency rules, regulations, and ethical guidelines.

Sincerely,



JEFF FLAKE

United States Senator



JOHN MCCAIN

United States Senator