

# Blue Ridge Environmental Defense League

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November 15, 2016

Gina McCarthy, Administrator  
Environmental Protection Agency  
Mail code: 1101A  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

## **RE: EPA Should Hold Industry Financially Accountable for its Toxic Messes**

Dear Administrator McCarthy:

On behalf of the Blue Ridge Environmental Defense League, I write to recommend that the US Environmental Protection Agency propose and implement rules establishing reliable financing of toxic material cleanups under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) commonly known as Superfund for three classes of industry: chemical manufacturing, petroleum/coal products and electric power generation.

For 30 years, the Superfund law required the Environmental Protection Agency (EPA) to develop rules ensuring that industries that handle hazardous substances secure insurance or other financial means to clean up toxic spills. These rules are critical to guarantee that all hazardous spills are cleaned up quickly and thoroughly and without drawing on public funds. These rules also play an important role in preventing hazardous pollution, because companies are less likely to engage in unsafe practices and poor maintenance at facilities that handle dangerous chemicals when they know their own funds are being held for cleanup and when these poor practices significantly increase their insurance costs. Without these rules, a range of industries leave hazardous spills untreated for years and leave taxpayers to cover the high cost of cleanup.

This year, your agency has the opportunity to cure this decades-old problem. EPA is finally poised to require financial assurance for the most dangerous and riskiest industries that handle hazardous substances. By December 1, 2016, EPA will propose a rule establishing financial requirements under CERCLA for the hard rock mining industry. Also by December 1, 2016, your agency will publish a determination whether EPA will propose rules for three additional classes of high-risk polluters.

In 2009, EPA identified three industries, in addition to hard rock mining, that present a very high risk of harm from spills of hazardous chemicals, as well as exorbitant costs of cleanup. Those industries are the chemical manufacturing industry, the petroleum and coal products manufacturing industry, and the electric power generation, transmission, and distribution industry.

We urge you to demonstrate your commitment to protecting health and the environment from toxic releases by committing to establish rules for all three additional high-risk industry sectors. The burden of toxic waste sites in the U.S. falls disproportionately on communities of color and low-income communities. According to the EJ 2020 Action Agenda, people of color make up the majority of those living within 1.8 miles of hazardous waste facilities across the country. A 2014 study found that the percentage of Blacks living in fence-line zones near many of the most

hazardous chemical and oil facilities is 75% greater than for the U.S. as a whole, the percentage of Latinos in these zones is 60% greater, and the poverty rate is 50% greater.

These rules will protect these communities, because they will lead to better management of toxic waste as well as faster and more complete cleanups when accidents occur. In addition, the principal of polluter pays must be enforced to protect the health of Americans as well as their pocketbooks. Continuing to establish financial assurance regulations for high-risk industries is sound public policy.

The three industries pose high risk to communities from toxic releases, have long histories of past spills, and have demonstrated repeatedly an inability to pay for expensive cleanups. All of the industry sectors operate a large number of facilities in the U.S., and thus, there is potential for releases of and exposure to hazardous substances in communities across the nation.

Specifically:

- According to EPA, the chemical manufacturing industry generated approximately 19.8 million tons of hazardous waste, or approximately 61 percent of the total amount of hazardous waste in the U.S.
- In 2007, the Census Bureau estimated that there were approximately 13,000 chemical manufacturing facilities in the U.S. EPA estimated that public funding expended to clean up Superfund sites created by the chemical manufacturing industry was approximately \$2.7 billion through 2009
- Petroleum and coal products manufacturing also includes a very large number of active facilities in the U.S., creating a high potential for releases of and exposure to hazardous substances. In 2007, the U.S. Census Bureau estimated the number of active petroleum and coal products manufacturing facilities at approximately 2,300.
- Facilities in the petroleum and coal products manufacturing industry generate significant quantities of hazardous wastes, approximately 4.2 million tons of hazardous waste per year, which is second only to the chemical manufacturing industry.
- Because of their need for large amounts of water, refineries tend to be located near waterways or on the seashore, which increases the potential to impact groundwater, surface water, aquatic biota, and aquatic vegetation as well as wetlands, wildlife, soils, air, cultural resources, and humans that use these resources recreationally or for subsistence.
- Costs of hazardous waste and chemical contamination disasters are routinely high. After 10,000 gallons of a coal processing chemical leaked into the water supply of Charleston, West Virginia, a federal judge ordered West Virginia American Water Co. and Eastman Chemical to pay a total of \$151 million in damages. A third company implicated in the disaster, Freedom Industries, declared bankruptcy, listing assets and liabilities worth between \$1 million and \$10 million—far short of what was required for remediation.
- The severity of consequences posed by spills by the petroleum and coal products manufacturing industry is evident in the huge costs associated with past and estimated future costs necessary to protect health and the environment through extensive and long-term remediation efforts following such spills as the Exxon Valdez and BP Gulf spill. For Superfund sites identified as petroleum refineries, EPA has already spent approximately \$250 million through 2009.

- The electric power generation, distribution, and transmission industry also operates on a large scale, with releases to the environment and exposure to humans, organisms, and ecosystems of hazardous substances on a similarly large scale. On-site releases of hazardous substances from this industry sector are third in quantity after hard rock mining and chemical manufacturing.
- EPA has determined that hazardous releases from the electric power generation, distribution, and transmission industry exceed 150 contaminated sites, including the 2008 spill in Kingston, Tennessee, which constitutes the largest toxic waste spill in U.S. history (50 times the volume of the Exxon Valdez spill) and one of the highest costs of cleanup (\$1.2 billion).
- Bankruptcies within all three industry sectors increase the likelihood of uncontrolled releases and hazardous substances being left unmanaged, thereby significantly increasing risks.

EPA has estimated that one in four Americans lives within three miles of a hazardous waste site. The cost of cleaning up even a single site is high— for example, according to a 2005 report, it will cost \$140 million, on average, to clean up each of the 142 largest Superfund sites, for a total of almost \$20 billion. The parties responsible for these messes often evade costs: Cleanups at 60 so-called “omega-sites” are already being funded either wholly or partly by public funds. Because the Superfund tax expired 15 years ago, the funds available for cleaning up toxic sites has been dramatically reduced. It is thus critical that financial assurance rules guarantee that funds are available for cleanup.

The Superfund Act was written to protect the public from hazardous spills and pollution and to hold violators accountable. Thirty years later we see polluters declaring bankruptcy and opting out of their financial obligations. We see communities left with poisoned soil and water and American taxpayers stuck with an exorbitant cleanup bill. The EPA must not continue to neglect a key part of the Superfund law. Industry has escaped financial responsibility for more than 30 years and it is well past time to correct this situation. Our health, safety and economy depend on your upcoming decision to hold polluters responsible.

Respectfully,



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