

# New rules to hold mining industry accountable for cleanups

June 1 2016, by Madison Condon, Earth Institute, Columbia University

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Emergency retaining ponds constructed by the EPA following a spill at the abandoned Gold King Mine in Colorado. A court has ordered the EPA to write new rules requiring mining companies to provide financial assurance they will pay for environmental damage. Credit: EPA

Early this year, a federal court agreed with environmental advocates that the Environmental Protection Agency (EPA) must take steps to ensure that mining companies pay for their own harmful environmental impacts

so the taxpayer is not stuck with the bill. The Court of Appeals for the D.C. Circuit [affirmed a settlement agreement](#) between the EPA and several environmental groups that establishes a timeline for the creation of financial assurance requirements for certain hazardous industries, starting with hardrock mining.

By the terms of the agreement, EPA must fulfill its responsibility under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to require industries that handle hazardous materials to provide up-front financial securities to cover the cost of the cleanup of their operations. These securities can take several forms, including a surety bond, insurance mechanism, or letter of credit.

In 2005, the U.S. Government Accountability Office published a report, [Environmental Liabilities: The EPA Should Do More to Ensure that Responsible Parties Meet Their Cleanup Obligation](#), in which it explained that the burden of cleaning up "hazardous waste sites is increasingly shifting to taxpayers" because companies can evade liability by dissolving through bankruptcy or structuring their assets separate from their liabilities through subsidiaries.

In 1992, for example, cyanide leach pads at the Summitville mine in Colorado spilled into the Alamosa River, requiring an EPA Superfund [cleanup effort costing \\$192 million](#). The financial assurances posted by the operating company at the time were only \$4.5 million. While state and federal governments were eventually able to [obtain \\$28 million as part of a bankruptcy settlement](#), the taxpayer was left to foot the remaining cost, well over \$100 million.

EPA itself [has estimated](#) that remediating all of the nation's hardrock mining sites will cost between \$20 billion and \$54 billion, and that given current levels of available funding "no more than eight to 20 percent of all cleanup work could be completed within 30 years." While the Bureau

of Land Management has had financial assurance requirements in place for mines operating on public lands, a [2005 Government Accountability Office report](#) highlighted that these requirements were insufficient, out of date and under-enforced. For 48 mining operations on Bureau of Land Management land that had begun operation and closed since these assurances were in place, "financial assurances had paid or guaranteed \$69 million and federal agencies and others had provided \$10.6 million to pay for reclamation, leaving \$56.4 million in reclamation costs unfunded."



A spill at the Summitville mine in Colorado in 1992 left taxpayers footing more than \$100 million in cleanup costs. Credit: U.S. Geological Survey

In its decision, the D.C. Circuit explained its rationale for its support of the assurance requirements: "By making it more difficult for mine operators to avoid paying for the cleanup of their hazardous releases,

basic economic self-interest means the operator will take cost-effective steps to minimize hazardous releases in order to minimize their environmental liabilities." The court cited the Atlanta Gold mine in Boise, Idaho, as an example of a facility that is actively discharging hazardous material, arsenic and iron, into surface water and yet has "insufficient financial assurances for future cleanup efforts."

Just how these requirements will be structured is yet unknown. The provision of CERCLA that calls for financial assurances, Section 108(b), orders EPA to require "evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances." The statute does not elaborate on how to calculate these risks.

Around the world, different jurisdictions impose a wide range of assurance requirements. In 2005 the International Council on Mining and Metals conducted a [survey on global financial assurance practices](#). The amount of the assurance can depend on what condition the mine site is required to return to after operations close, site characteristics, safety mechanisms in place at the facility, and what percentage of the total predicted reclamation cost is guaranteed. Some jurisdictions allow for discounts based on a mining company's corporate track record and the financial strength of its balance sheet.

Assurance requirements are calculated based on the predicted cost of mine reclamation following the closure of operations. But they typically do not consider the likelihood of an environmental disaster occurring, such as a tailings dam collapse, as other financial instruments such as liability insurance are meant to cover these costs. However, such disasters can occur during [cleanup efforts](#), like at the Gold King Mine in Colorado. And, as discussed by Bowker and Chambers, a mine's liability insurance policy often does not cover the full cost of a catastrophic failure such as a tailings dam collapse.

Once the EPA issues its proposed financial assurance regulations, affected parties will have an opportunity to comment on the rules before they become final.

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