

January 7, 2010

## **POTENTIAL NEW FINANCIAL RESPONSIBILITY REQUIREMENTS ON INDUSTRY TO FUND FUTURE ENVIRONMENTAL CLEANUPS**

The U.S. Environmental Protection Agency (“EPA”) is seeking public comment on whether to impose new financial responsibility regulations on three industrial sectors: chemical manufacturing; petroleum and coal products manufacturing (mainly petroleum refineries); and electric power generation, transmission, and distribution. EPA identified classes of facilities within these three industry sectors for which it plans to develop financial responsibility regulations under Section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”). These industrial sectors join the hardrock mining industry, which EPA previously identified in July 2009, as industries that may be subject to financial responsibility requirements. Compliance with these potential new financial responsibility requirements may impact the industries’ bottom line.

If promulgated, the new financial responsibility requirement would mean that to own or operate any site or area where a hazardous substance is located, the owner or operator must demonstrate its ability to pay for a cleanup in the event of a release of hazardous substances from the facility. Financial responsibility is typically established by obtaining insurance, a guarantee, a surety bond, a letter of credit, or qualifying as a self-insurer.

EPA targeted “risky” classes of facilities and industry sectors by analyzing the degree and duration of risk associated with each industry sector. EPA examined the types of sites listed on the National Priorities List (“NPL”), data on hazardous waste generation from the 2007 Resource Conservation and Recovery (“RCRA”) Biannual Report, and data from the Toxics Release Inventory.

EPA also identified classes of facilities in four additional industry sectors on which it may decide, after further review, to impose new financial responsibility rules. These industrial sectors are: waste management and remediation; wood products manufacturing; fabricated metal product manufacturing; and electronics and electrical equipment manufacturing – as well as facilities that recycle materials containing CERCLA hazardous substances. To make its decision, EPA plans to analyze the NPL, the RCRA Biannual Reports, and the Toxics Release Inventory.

EPA seeks public comment on whether it should develop proposed financial responsibility regulations for specific classes of facilities within each identified industry sector or for each identified industry sector as a whole, including information demonstrating why financial responsibility requirements would not be appropriate for specific classes of the facilities. EPA also requests information on the other four industry sectors, which may inform its decision on whether to impose financial responsibility requirements on them. ***The deadline for submitting comments is Friday, February 5, 2010.***

## Environmental Alert

The Federal Register Notice is available at <http://edocket.access.gpo.gov/2010/pdf/E9-31399.pdf>.

If you would like to discuss submitting comments in response to EPA's proposed new financial responsibility requirements, please contact us.

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**If you have any questions regarding this new development, please reply to this email or to any of the members of our Environmental Law Department attorneys listed below.**

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