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.

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

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.

Richard A. Barr 313.465.7308 email: rbarr@honigman.com
Naeha Dixit 313.465.7682 email: ndixit@honigman.com
Kenneth C. Gold 313.465.7394 email: kgold@honigman.com
S. Lee Johnson 313.465.7432 email: sijohnson@honigman.com
Megan Conlon McCulloch 313.465.7444 email: mmcculloch@honigman.com
H. Kirk Meadows 517.377.0739 email: hkmeadows@honigman.com
Steven C. Nadeau, Chair 313.465.7492 email: snadeau@honigman.com
Brian Negele 313.465.7494 email: bnegele@honigman.com
Joseph M. Polito 313.465.7514 email: jpolito@honigman.com
Jeffrey L. Woolstrum 313.465.7612 email: iwoolstrum@honigman.com

Honigman’s Environmental Alert is published solely for the interests of friends and clients of Honigman Miller Schwartz and Cohn LLP and should in no way be relied upon or construed as legal advice. For specific information on recent developments or particular factual situations, the opinion of legal counsel should be sought. You have received this email because you are on the firm’s e-distribution list for this publication. If you wish to be removed from this list, or if you encounter technical difficulties, please reply to this email.

© Honigman Miller Schwartz and Cohn LLP 2010. All rights reserved.