



**Walter Wright, Jr.**  
wwright@mwlaw.com  
(501) 688.8839

# Comprehensive Environmental Response, Compensation, and Liability Act/Hardrock Mining: U.S. Court of Appeals (D.C. Cir.) Grants Motion Establishing Schedule for Issuance of Financial Assurance Regulations

## Arkansas Environmental, Energy, and Water Law Blog

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The United States Court of Appeals for the District of Columbia Circuit ("Court") in a January 29<sup>th</sup> decision granted a joint motion by the Idaho Conservation League and other environmental groups (collectively "ICL") and the United States Environmental Protection Agency ("EPA") establishing a schedule for promulgation of Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") financial assurance regulations for the hardrock mining industry.

ICL had previously filed a petition with the Court for a Writ of Mandamus directing EPA to promulgate financial assurance regulations required by Section 108(b) of CERCLA.

Section 108(b) requires EPA to promulgate regulations requiring:

... that classes of facilities establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances.

This statutory requirement had been in place since CERCLA was originally enacted in 1980.

EPA's failure to develop such regulations resulted in ICL's seeking a declaration that there had been an unreasonable delay. Further, an Order had previously been issued directing EPA to issue financial assurance regulations by January 1, 2016 for four industries (including hardrock mining) the agency had previously identified as a priority.

The schedule/time table approved by the Court requires that EPA undertake rulemaking with respect to hardrock mining by December 1, 2016 and issue a notice of final action by December 1, 2017.

Financial assurance regulations are intended to provide some assurance that those entities potentially responsible for the release of hazardous substances have the funding or financial resources available to pay for any necessary cleanup or reclamation efforts.

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