

Transcript of *CERCLA Section 108(b) Proposed Rule for Hard Rock Mining*

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https://clu-in.org/conf/tio/108b_051716/

Well, thank you, Jean.

My name is Tim Taylor. I will be the main narrator during this presentation.

Moving on to an outline of what we'll be working through, this is a presentation for our current thinking regarding CERCLA Section 108(b) Financial Responsibility. And the outline begins with a few slides, some of which may look familiar to those who participated in the previous webinar. But we're including them here to help set the context for the meat of the presentation, which is the proposed rule structure, including: defining the universe of facilities to be regulated; how funds will flow from the Financial Responsibility Instrument to the CERCLA Cleanup; the scope and amount of financial responsibility; the relationship of Section 108(b) Financial Responsibility to state, tribal and local government law; as well as its relationship to other Federal law.

We'll also talk about our various outreach activities regarding the rule and how you can comment on the rule.

So let's begin.

CERCLA is an acronym for the Comprehensive Environmental Response, Compensation and Liability Act of 1980. The law is also called "Superfund." Rather than repeating the full name over and over again, we'll continue to refer to this law as CERCLA.

Section 108(b) of CERCLA directs EPA to develop requirements 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.

A key purpose of this provision is to assure that owners and operators make financial arrangements to address risks from the hazardous substances at their sites. EPA also intends for the rule to create financial incentives for using improved mining practices.

Section 108(b) also requires that we issue a Federal Register notice identifying the classes of facilities for which we will first develop requirements, which we did on July 28, 2009, when we issued a Priority Notice that identified classes of facilities within the hardrock mining industry as those for which we'd first develop requirements. More for information about this, please follow the URL listed here and in the Adobe Connect side window.

For the purposes of the notice, EPA defined "hardrock mining" as the extraction, beneficiation or processing of metals, such as copper and gold, and nonmetallic, non-fuel minerals, such as asbestos, phosphate rock, and sulfur. We also identified some classes of facilities that are not included in the rulemaking, even though they fell within the definition of hardrock mining. And for more information about that, we've included the docket number for you to look it up in the docket.

On January 29th of this year (2016), the U.S. Court of Appeals for the District of Columbia Circuit established a schedule for EPA proceedings under CERCLA 108(B). The order requires us to assign a Notice of Proposed Rulemaking for the hardrock mining industry by December 1, 2016, and to take final action by December 1, 2017.

The order also requires us to determine whether we will issue a Notice of Proposed Rulemaking on the chemical manufacturing industry, the petroleum and coal products manufacturing industry, and the electric power generation, transmission, and distribution industry by December 1, 2016.

Moving on to the structure of the rule, our approach proceeds from two premises: that CERCLA is a response program that addresses CERCLA 107 liabilities : response costs, natural resources damages or NRD, and health assessments, and is distinct from closure and reclamation requirements of federal and state permit programs. And that Section 108(b) rules complement, but do not change or substitute for, existing Superfund cost recovery and enforcement procedures.

This regulatory approach is based on five foundational components, including: the universe of facilities to be regulated; the flow of funds from the financial responsibility instrument to the CERCLA cleanup; the scope and amount of financial responsibility; the relationship of Section 108(b) financial responsibility to state, tribal, and local government law; and its relationship to other federal law.

Before we walk through these components, let's pause for a clarification. Based on some questions we received since the last webinar, we wanted to clarify some examples of what the rule does *not* do.

As standalone financial responsibility requirements, there are significant differences between Section 108(b) requirements and other existing requirements for hardrock mining facilities. In particular, the proposed rule does *not* include technical requirements regulating the operation, closure, or reclamation of hardrock mining facilities. And the proposed rule does *not* provide financial responsibility to ensure closure or reclamation requirements made applicable to hardrock mining facilities through a permit.

In addition, by promulgating and implementing this regulation, we are *not* saying that a CERCLA response is required at a regulated facility. CERCLA liability is unaffected by an owner or operator providing evidence of financial responsibility under EPA's CERCLA 108(b) regulations.

Now, moving on to the universe of facilities to be regulated, we examined the facilities identified in the 2009 Priority Notice to identify classes for financial responsibility regulation. We are considering an approach that would identify classes of hardrock mines that we believe present a lower level of risk of injury and would *not*, therefore, be included in the rulemaking. These classes include: placer mines that don't use hazardous substance, exploration mines, and small mines of less than five acres.

Under this approach, the remainder of the hardrock mines identified in the Priority Notice would be included in the rulemaking. The proposed rule would also include primary processing activities located at or near a regulated mine that are under the same operational control as the mine.

As to the flow of funds from the financial responsibility instrument to the CERCLA cleanup, we looked at how the Section 108(b) financial responsibility would supplement existing CERCLA sources of funding to address releases and potential releases of hazardous substances.

Under the approach, we're considering instruments that could be used to pay into a special account for a CERCLA settlement, into a trust fund established pursuant to an administrative order, or after a court finding of CERCLA liability. EPA would use existing Superfund enforcement processes first – such as settlement, orders, and cost-recovery actions against potentially responsible parties to effect cleanup.

Other parties – such as other federal agencies, the states, tribes, or the public – could also make claims against the owner or operator under Section 107, payable from the instruments.

Under CERCLA Section 108(c), parties -- including EPA -- could also bring direct action claims against the instrument provider.

Regarding the scope and amount of financial responsibility, we considered what Superfund costs should be covered by the financial responsibility instruments and how the amount of financial responsibility should be determined. We are considering an approach under which owners and operators would be required to establish and maintain financial responsibility instruments to cover all Section 107 liabilities at their facilities.

To determine the amount of financial responsibility required for response costs, we're developing a formula that identifies an amount that reflects the primary site conditions and characteristics that would affect the costs of removal or remedial action. The formula would assign dollar values based on facility and unit characteristics. These dollar values would be summed to establish the facility's level of financial responsibility.

Now, we intend the formula to reflect the relative risk of facility practices in managing hazardous substances, including reductions in risk that may result from compliance with other regulatory requirements. We are considering a fixed amount of financial responsibility for health assessment costs and a fixed percent for natural resource damages that would be required at all facilities.

We're trying to calculate a total financial responsibility amount that will cover all Superfund costs. And in the event of a Superfund action, the whole amount of funds would be available for any future response action, natural resource damages, or health assessment. Availability wouldn't be assigned to a particular site feature and wouldn't be driven by components of the formula.

Now, moving on to the formula itself, under the approach we're considering, facility-specific inputs would be used to generate a baseline level of financial responsibility. The baseline could then be reduced through demonstrating that current controls at the facility are in place. Now, to be clear, controls that are planned or otherwise in the future don't qualify for reductions.

We anticipate that the formula will need to be reapplied periodically to account for changes in facility conditions and practices.

We've identified several categories of site characteristics or practices to build into the formula, including components associated with particular sources and control including open pits, underground mines, waste rock piles, heap and dump leaches, tailings facilities, process ponds and reservoirs, and slag piles; components associated with site-wide sources and controls, such as drainage construction and solid and hazardous waste disposal; and components associated with operations and maintenance, or O&M, such as interim water management and long-term water treatment, and site wide operations and management and monitoring.

For some examples of expected formula inputs, we're looking at current site features as the basis for inputs which an owner or operator will enter to calculate the baseline amount.

The site features are both readily-identifiable by the facility, owner or operator, and readily verifiable by EPA, such as: acreage of site features; presence of an underground mine; hydraulic head in the underground mine; distance to surface water; net precipitation – in other words, precipitation minus evaporation; use of in-situ leaching; and site-wide water flows.

Regarding opportunities for financial responsibility reductions, we are looking at current engineering controls as the basis for reductions to the baseline amount. For example, controls may already be present because of other regulatory programs or undertaken voluntarily. This approach will both reduce the amount of financial responsibility where strong regulatory controls are already present and also provide an incentive for sound mining practices.

We intend to allow reductions from the baseline amount for controls that reduce the volume, toxicity, and mobility of hazardous substances. Categories of reductions may include: feature-specific source control capital cost reductions, site-wide drainage capital cost reductions, capital and operations and maintenance reductions for water treatment, and short- and long-term operations and maintenance and monitoring reductions.

Regarding the instruments themselves, we anticipate consideration of at least the following instruments: letter of credit, insurance, trust fund, surety bond, a credit rating-based financial test and corporate guarantee.

We've met with representatives of the insurance, surety, and banking communities who are experienced in providing instruments for other financial responsibility programs. Because the CERCLA 108(b) rule differs in operation from other existing programs, some aspects of how the instruments would operate are novel.

Novel aspects include the payout of the instrument under the direct action provision, the scope of coverage, and the payout to multiple claimants. Instrument providers will have to consider how to address these differences. We are considering the financial industry's feedback as it develops the instruments.

Regarding potential compliance costs, we anticipate that the cost for a facility to comply with the proposed rule would largely stem from a limited number of requirements associated with establishing and maintaining the financial instrument, including: establishing a financial responsibility amount, obtaining a financial responsibility instrument for that amount, and recordkeeping and reporting.

The cost to demonstrate evidence of financial responsibility will depend on site-specific factors, including: the financial responsibility amount, the choice of instrument, and other factors that instrument providers might consider.

Let's walk through some examples.

This example highlights the key inputs used to develop a facility's financial responsibility amount and instrument pricing. The example facility has an open pit of approximately 200 acres; a waste rock pile of around 700 acres; a tailings facility of about 400 acres. The facility is located in an area with a moderate annual net evaporation and has a total site-wide water flow of approximately 500 gallons per minute.

In addition, the facility practices two types of engineering controls. Alkaline amendments are added to its open pit to reduce leached concentrations, and waste rock is segregated to separate out the highest leaching rock. These practices will reduce the financial responsibility amount by about 40%, resulting in a total financial responsibility amount of around \$75 million.

Besides the financial responsibility amount, the primary driver of the annualized cost of various instruments is the parent company's financial characteristics, such as risk profile and cost of capital. For developing these estimates, we conservatively assumed a fully-funded instrument and a short pay-in period. Using these assumptions, the example mine could have an annualized cost of anywhere between \$4 million and \$28 million to obtain the calculated financial responsibility amount. Under this example scenario, the facility owner or operator would likely choose to demonstrate financial responsibility using an insurance policy.

Now, this table compares the previous example with two additional facilities of different types, sizes, and climates. Example Facility No. 2 has an underground mine on site and a large tailings facility of about 1,000 acres. This facility is located in an area with a moderate annual net evaporation, and has a total site-wide water flow of roughly 100 gallons per minute.

Example Facility No. 3 has a large, open pit of about 1,000 acres; a large waste rock pile of about 2,000 acres; and a large tailings facility of about 700 acres. This facility is located in an area with a much higher annual net evaporation, and has a total site-wide water flow of approximately 1,000 gallons per minute.

In addition, Example Facility No. 2 practices engineering controls that will reduce the required financial responsibility amount by about 80%, resulting in a total financial responsibility amount of around \$25 million.

Example Facility No. 3 uses fewer best practices, resulting in fewer reductions, only 24%, and a total financial responsibility amount of around \$525 million.

In these example facilities, one can see that the financial responsibility varies depending on the site characteristics and the types of engineering control practices, regardless of the corporate owner. However, to the extent that corporate owners have differing credit ratings, the type of instrument chosen and the cost of obtaining instruments could vary.

Public participation is another aspect of the rule that we consider quite important. We are committed to ensuring transparency and to providing opportunities for public participation in our programs, including CERCLA. Public participation promotes greater awareness of the federal regulatory requirements. And we understand that the public can play an important role in ensuring that the regulation achieves its goals. We are considering how to incorporate transparency and public participation into the hardrock mining rule.

Now let's step through the process of complying with the rule, beginning with initial notification.

Following promulgation of the CERCLA 108(b) rule for hardrock mining, regulated facilities would be required to notify us; to provide basic information about the facility; and to obtain an EPA ID if not previously issued to the facility.

To determine the required level of financial responsibility for a facility, the facility owners or operators would calculate the financial responsibility amount by entering site-specific information about site features into the hardrock mining financial responsibility formula. Facilities would then submit the calculated financial responsibility level, the formula inputs, and supporting information to us. Facilities would then obtain an instrument for the required financial responsibility amount and submit evidence of financial responsibility to us. This requirement would be phased in over a maximum period of four years after promulgation of the rule.

The facility would need to maintain relevant information about itself and the financial responsibility requirement and make that information available to the public. The owner and operator would need to maintain evidence of financial responsibility throughout the facility life; update the level of financial responsibility as necessary, but at least every three years; and notify us of certain change conditions.

Finally, at the end of a facility's life, the owner or operator could apply for release of, or adjustment of, the level of financial responsibility. We'd evaluate the facility and the need for continued financial responsibility and would adjust the level of financial responsibility required, or release the owner or operator from the requirement to obtain financial responsibility.

Moving on to the relationship of 108(b) financial responsibility to state, tribal, and local government law, our current view is that evidence of financial responsibility under Section 108(b) was not intended to preempt state or local mining reclamation and closure requirements. In particular, 108(b) is designed to assure that funds are available to pay for CERCLA liabilities, whereas our review of state financial responsibility requirements to date indicate that many are designed to assure compliance with state regulatory requirements and, thus, are not in connection with liability for the release of a hazardous substance under CERCLA Section 114(d).

Similarly, we believe that evidence of financial responsibility under Section 108(b) was not intended to preempt financial responsibility requirements that are designed to assure compliance with tribal mining reclamation and closure requirements. We plan to address this issue in the preamble of the proposed rule.

Regarding the relationship with other federal law, we have also evaluated the applicability of Section 108(b) requirements at facilities where other federal financial responsibility requirements apply. And we believe that Section 108(b) requirements established to address CERCLA liabilities are distinct from federal closure and reclamation bonding requirements imposed under other statutes.

It's important to note that we intend the Section 108(b) financial responsibility amount to account for environmentally-protective practices already in place, including those required by other regulations.

We're conducting a study to assess the capacity of third-party markets to underwrite financial responsibility instruments required by the 108(b) rulemaking. The draft study examines both the current state and future outlook of the markets for financial responsibility instruments based on publically available and attributable data from the U.S. Treasury, the Government Accountability Office, Standard & Poor's, industry, and nonprofit institutions.

The draft study report is currently undergoing internal review, and we expect to make the report available before issuing the proposed hardrock mining rule.

The next several slides describe specific outreach activities we'll undertake in the coming months, concurrent with development of the proposed rule. We'll perform any additional outreach through the Superfund financial responsibility website, the URL for which is displayed here and in the Adobe Connect side window.

Examples of specific outreach efforts include the Federalism consultation. Pursuant to Executive Order 13132, or Federalism, we will consult with state and local government officials. The Order requires that federal agencies consult with elected state and local government officials or their representative national organizations when developing regulations that have Federalism implications.

We are aware that state representatives have expressed concerns regarding CERCLA's express presumption provision in Section 114(d). We are, therefore, holding this consultation as part of ongoing efforts to involve our intergovernmental partners in developing this proposed rule. The consultation provides the opportunity to discuss the approach to the proposed rule and hear concerns from state and local government officials.

Another outreach effort involves tribal consultations. We'll also consult with the federally-recognized Indian tribes. Each tribe will be notified in writing of the rulemaking and will have the opportunity to request government-to-government consultation. Our goal is to ensure that tribal officials have sufficient information to be able to provide informed input on this rulemaking to EPA.

We have already identified tribes that have their own financial responsibility requirements for hardrock mining. If more tribes have such requirements, we are interested in that information.

We'll also be reaching out to small entities. The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act, or SBREFA, requires us to convene a Small Business Advocacy Review or SBAR Panel, consisting of representatives from three federal agencies for proposed rules that will have a significant economic impact on a substantial number of small entities.

Small entities are small businesses, small governments, and small organizations, including appropriate trade associations. Small entity representatives have the opportunity to offer individual advice and recommendations to the SBAR Panel to ensure that we carefully consider small entity concerns. The SBREFA process for the CERCLA Section 108(b) rulemaking has already begun. We expect it to conclude with an SBAR Panel report listing recommendations to EPA.

Finally, regarding how and when to comment on the proposed rule, as I mentioned earlier, the CERCLA 108(b) financial responsibility requirements for facilities in the hardrock mining industry proposed rule is due to be signed by December 1st of this year (2016). It will then be published in the Federal Register and available for public review.

The proposed rule will provide instruction on how to comment and the duration of the public comment period. We will consider public comments received during the comment period and will provide responses when the Final Rule is issued.

Thank you very much for your time.

At this point, we will be breaking into our Q&A period with the remaining time that we have allotted. This is just a reminder. If you have not submitted your comments or questions for our presenter and our team today, you may do so using the Q&A window which appears in the lower right corner of your screen. Again, to send in your questions or comments, please click on the empty box all the way at the very bottom of that Q&A window; type up your message; and then hit the Enter key on your keyboard or press the small cartoon bubble button to the right. Either method will privately submit your messages.

I believe the team is queueing up questions now to start reading them out loud and addressing. Are you all prepared to begin with the Q&A portion?

[No response]

Again, if the team in the room is on mute, you may need to unmute to let me know if you need a few more moments before we open up for Q&A; that's perfectly fine.

Thanks, Jean.

At this point, we've received a number of questions, many related to the cost formula. And at this point, I will turn it over to Richard Benware of the CERCLA Section 108(b) Financial Responsibility Team for him to try to address several of these questions at once.

Yes, this is Richard Benware. We've received several questions on the cost formula and some of the estimated impacts we presented in the slides today.

The cost formula – some of the questions pertain to the nature and process of the derivation of the factors that were listed out. These factors were examined using a number of statistical regression techniques, where we essentially determined what characteristics drove response costs likely to be higher. And we reference you back to that slide.

In terms of the several questions pertaining to the geochemical and other characteristics and whether or not particular practices and characteristics were examined in setting of financial responsibility, for these we note that we are looking at existing engineering controls and facilities that tend to have cleaner sites with less geochemical leaching characteristics i'll also tend to have higher reduction factors based on their engineering controls. And those that are typically higher in their leaching characteristics and infiltration rates, things like that, will typically require more engineering controls to achieve the same level of reduction.

We had other questions pertaining to the examples in the spreadsheet, whether or not we examined surety bonds. There I will say that a lot of the surety bond versus insurance versus letter of credit, we did find surety bonds to often have similar percents of costs for acquiring them; and so evaluation of these three typically bracket the range that we'd see for surety bonds. It might be in these particular examples, the percents will tie; but across the spectrum, we're seeing that the percent cost for a surety bond is commensurate with the other three that we presented.

We also received a lot of questions talking about state or federal programs. Here we are continuing to work into reductions, and looking at state and federal programs and how to reduce financial responsibility commensurate with those programs.

And then finally, there were a lot of questions as to when and how EPA will make the cost formula public. EPA's current plans are to continue on with the SBREFA process as well as development of the rule, and to ultimately be releasing with the proposed rule a technical support document defining the creation of that formula, as well as a calculator through which companies can estimate their financial responsibility.

Okay, thank you, Richard.

We will take a moment here to tee up the next question, so please hold.

[Pause]

Again, just a gentle reminder, while the team works together to queue up the next round of questions, we do have the open Q&A window in the lower right corner of your screen. You can privately submit your comments and questions into that window at any time, and we'll try to get through as much as we can in the time that's allotted today.

If you are experiencing any technical difficulties, need help adjusting the audio, you can feel free to type in a message into that window as well in the lower right corner. We'll be more than happy to try to resolve those issues or help adjust your audio.

If you're looking for some of the resources or websites that were referenced throughout today's session, again, I draw your attention to the web links on the middle right side of your screen. You can click on any one of those links and press the "Browse To" button to open them up on your own end.

Again, we should be resuming with the next portion of the Q&A period here in just a moment.

[Pause]

While we're waiting to queue up that next round of questions, we did have a few participants who asked if there would be an archive or recording of today's webinar. The organizers will be releasing an archive of today's session. Everyone who signed up or was on the waitlist for today's event will receive an e-mail as soon as that archive is available for access online. So, yes, there will be a copy of today's session made available.

[Pause]

Are you ready to carry on, Linda?

We're ready to carry on. We've received a question that states: "Please explain how the process would work in the event of an unexpected release."

And for this question we will turn to Barbara Foster, who is also a member of the CERCLA 108(b) Financial Responsibility Team.

Thank you, Linda.

Yes, this is a question actually about the scope of the rule. This is a financial assurance rule, and there are existing Superfund processes out there that respond to things; and those processes wouldn't be changed by this rulemaking. So the impact of this rule would be that there would be funds available in a different way and that's the ways that are described in slide 11.

Thank you, Barbara. And again, I will place you on mute for just a couple of moments as we tee up the next question.

Again, if you have questions, comments, technical difficulties, you can use that Q&A window in the lower right corner of your screen to report those at any time.

We do have the Superfund Financial Responsibilities website queued up in the Web links on the right side of your screen.

If you are looking for copies of the presentation material, as several of you have asked, they are currently available to download as a PDF. You'll find that information, again, under the Seminar

Resources links. If you need any help in locating those materials, you can feel free to request it into the Q&A window again at any time.

We do thank everything who is joining us today and working with our team, sharing your questions and comments. And we'll carry on with that open Q&A Session in just a moment.

We will also provide an opportunity to share feedback after today's live broadcast. So please stay with us or be sure to open up the "Seminar Feedback" link that appears on the middle right side of your screen before you leave today's webinar and share your thoughts on today's live broadcast.

[Pause]

Okay, we have a follow-up question for Richard Benware; and I will turn it over to him.

Yes, we had a follow-up question from Suzanne, who asked: "Slide 18 lists categories of reductions that may be considered. Can you give an example of a feature-specific source control capital cost reduction so that a layman can understand what that is?"

Yes, to clarify when we're talking feature-specific, we're talking about the mine site feature. And so we're talking about something like a waste rock pile or a tailings facility or a heap or dump leach – so a specific feature of the mine rather than the mine as a whole. And so here, a feature-specific reduction would be something – a liner. And the fact that you can place a liner under your waste rock doesn't necessarily mean that you've placed one under your tailings facility.

Thank you, Richard. We have another question, and it is: "Does a site have to be on the NPL to be required to comply with 108(b)?"

And for this question, I will turn it over to Mike Pease, also of the CERCLA 108(b) Financial Responsibility Team.

Thanks, Linda.

The answer to the question is, "No." In fact, you wouldn't necessarily already have to have had any CERCLA action. You would not be determining that a CERCLA response is required at a regulated facility as a part of implementing this rule. The requirements of the proposed rule would establish financial responsibility *should* a CERCLA action be needed in the future. And some facilities subject to Section 108(b) requirements may never require a CERCLA action.

Thank you, Mike.

We also have a couple of general questions, more of a procedural nature, that I will turn over to Sonya Sasseville, who is the Director of the Program Implementation and Information Division leading up this effort.

Thanks, Linda.

I just wanted to answer a procedural question. The question was: "Is assigning a notice of proposed rulemaking by December 1st the same thing as disseminating it for public comment?"

I just wanted to explain that once it's signed, then it has to get into the Federal Register; and there's a little bit of a delay time there. So it will be disseminated as soon as possible after the December 1st signature.

Okay, thank you, Sonya.

At this point, I'm going to put you on mute for just a couple of seconds.

Again, we have a few moments left in today's live broadcast time. So I just wanted to remind everybody, you can continue to send in those questions and comments for our presenters and their team using the Q&A window.

If you are experiencing any technical difficulties, please let us know using that Q&A window. We'd be more than happy to work with you to resolve those issues.

As noted, if you are leaving today's webinar, there is a link to share your feedback or thoughts about today's live broadcast that appears on the middle right side of your screen. You can simply click the link that says "Seminar Feedback" and press the "Browse To" button to open those up.

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[Pause]

Again, our team is queueing up the next round of questions. We'll carry on with that question period here in just a moment. You still have time to send in your questions and comments, using the Q&A window in the lower right corner of your screen. Anything you type in there is private. Only the presentation team can read those questions, so I encourage you to share your thoughts and comments into that window with the time that we have remaining today.

[Pause for responses]

Okay, we've got another question. It is: "This proposed rule seems to be duplicative of state reclamation standards and financial assurance. How does compliance with state rules affect EPA's rule?"

And for this, I will turn it back to Sonya Sasseville to respond.

The answer to this is worth it when you look back at your slides to look at the relationship to federal and state laws. And in terms of looking at other standards or a particular state's standards, we see, and our conversations with states have indicated, that those regulations are really doing something different because they're about assuring that facilities comply with state closure requirements, reclamation requirements, enforcement of state permits. So they're very different.

However, we do realize that there is concern about the actual financial assurance that's provided. And what we're doing is developing our formula in a way that seeks to take into account controls on the ground, good practices, as was mentioned earlier, many of which aren't there because state rules or maybe other federal rules have imposed those requirements. So that is how the compliance with state rules would affect EPA's rules. If a facility has implemented good practices, they may reduce the amount of financial assurance that the facility has to put in place pursuant to CERCLA Section 108(b) regulations.

Okay, thank you, Sonya.

Again, I will be placing you on mute for just a few seconds; and we'll get back to you.

[Pause for responses]

Okay, we've gotten one questions that's been asked a couple of different ways: "How are hazardous substances defined for the purposes of the rule?"

And for this, I'll turn it back to Sonya Sasseville.

Okay, and the answer to that one is that this rule doesn't change how hazardous substances are defined under CERCLA. We're simply looking to the CERCLA definition for that.

Thank you, Sonya.

Again, I'll be placing you back on mute for a few seconds.

[Pause for responses]

Okay, we've received a question about reductions and how they're addressed in the formula. And I will turn this back to Richard Benware.

Yes, a specific question from Paula: "Will there be financial costs of failure to use dry stack tailings methods, particularly in a location with high levels of precipitation or on sites where there's instability (audio break) tailings facility?"

We are looking at paced and dry-stack tailings as an engineering control, as well as net precipitation on a site. So we are taking those factors into account.

Thank you, Richard.

Again, I'll be placing you back on mute.

Again, I'll continue to invite participants to share your questions or comments with the last few moments we have remaining in today's time slot into that Q&A window in the lower right corner of your screen. Before we end today's live broadcast, we will walk through a few final reminders, informing everyone how you can provide feedback for today's session, as well as access copies of the related websites and materials that were discussed, and again remind everybody how they'll be able to get ahold of the archive from today's session when it's available.

We'll resume with just a few more questions in a moment.

[Pause for responses]

All right, we have time for about one more question, and we have gotten one related to how direct action may be addressed within the rule. And I'll be turning to Mike Pease.

Thanks again, Linda.

Yes, we did have a question about direct action. It's important to note that direct action is a cause of action that's created under Section 108(c) of CERCLA; and it provides that any party with a valid claim can bring a direct action against the instrument provider in certain instances identified in the statute; for example, bankruptcy of the person liable under Section 107.

And we have been talking to the financial instrument provider community, where there are kind of varying levels of comfort with the direct action provision. And we're working through that and considering how best to reflect that in our rule.

Thank you, Mike.

And I think with that, we've come to the end of our webinar. I don't know if Jean has any final messages for you.

I do; thank you so very much, Linda.

Let's walk through just a few final reminders for the live audience that remains with us. For those of you who are looking for more information on this topic, as was noted throughout the live broadcast, you should take a look at the Superfund financial responsibility website. We've shared that link multiple times; it's currently listed on the middle right of your screen and also shared in the Q&A window.

We've also made a PDF copy of the slides available to download. You can follow that link under the Seminar Resources Page or, again, click on the link under Q&A to download a PDF copy of the materials presented today.

I will ask if each of you could take just a moment and share your feedback on today's live broadcast. There is an online form. If you click that link under the Web links and press the "Browse To" button, you'll get a short online form to give us your feedback for the event and help improve future events that we'll host online.

We did record, and we plan to archive, a copy of today's session. So you will automatically receive an e-mail with information on how to access that archive as soon as it's been made available.

With that, I want to thank the over 450 individuals who joined us for today's live broadcast and the members of the CERCLA 108(b) Planning Team who helped put together today's webinar.

This will be the formal conclusion of our live session. Thank you so very much for joining us.