

CERCLA Financial Responsibility Requirements Rule

Rule Link: <https://www.federalregister.gov/documents/2020/04/17/2020-07983/financial-responsibility-requirements-under-cercla-section-108b-for-facilities-in-the-chemical>

Financial Responsibility Requirements Under CERCLA Section 108(b) for Facilities in the Chemical Manufacturing Industry; Extension of Comment Period

Financial Responsibility Requirements Defined: “Section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) directs EPA to develop regulations that require classes of facilities to 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. The statute further requires that the level of financial responsibility be established to protect against the level of risk that the President, in his discretion, believes is appropriate, based on factors including the payment experience of the Hazardous Substance Superfund (Fund). The President's authority under this section for non-transportation-related facilities has been delegated to the EPA Administrator.” [Regulations.gov-- EPA-HQ-OLEM-2019-0086-0001, accessed [10/13/20](#)]

EPA Is Suggesting The Chemical Manufacturing Industry Doesn't Present A Level Of Risk To Taxpayer Funded Response Actions That Warrant Imposing Financial Responsibility Requirements For The Sector. “EPA has analyzed the need for financial responsibility based on risk of taxpayer funded cleanups at facilities in the Chemical Manufacturing Industry operating under modern management practices and modern environmental regulations, i.e., the type of facilities to which financial responsibility regulations would apply. That risk is identified by examining the management of hazardous substances at such facilities, as well as by examining Federal and state regulatory controls on that management and Federal and state financial responsibility requirements. Based on that examination, EPA is proposing that, in the context of CERCLA section 108(b), the degree and duration of risk associated with the modern production, transportation, treatment, storage or disposal of hazardous substances by the Chemical Manufacturing Industry does not present a level of risk of taxpayer funded response actions that warrant imposition of financial responsibility requirements for this sector.” [Regulations.gov-- EPA-HQ-OLEM-2019-0086-0001, accessed [10/13/20](#)]

Idaho Conservation League, Earthworks, Sierra Club, Amigos Bravos, Great Basin Resource Watch, And Communities For A Better Environment Sued To Prompt EPA To Issue CERCLA Section 108(B) Rules For The Chemical Manufacturing Industry. “In August 2014, the Idaho Conservation League, Earthworks, Sierra Club, Amigos Bravos, Great Basin Resource Watch, and Communities for a Better Environment filed a lawsuit in the U.S. Court of Appeals for the District of Columbia Circuit, seeking a writ of mandamus requiring issuance of CERCLA Section 108(b) financial responsibility rules for the hardrock mining industry, and for the three additional industries identified by EPA in the 2010 Advance Notice of Proposed Rulemaking (ANPRM), (2) that is, Chemical Manufacturing; Petroleum and Coal Products Manufacturing; and Electric Power Generation, Transmission, and Distribution. Following oral arguments, EPA and the petitioners submitted a Joint Motion for an order on Consent, filed on

August 31, 2015, which included a schedule for further administrative proceedings under CERCLA Section 108(b). The court order granting the motion was issued on January 29, 2016. A copy of the order can be found in the docket for this rulemaking." [Regulations.gov-- EPA-HQ-OLEM-2019-0086-0001, accessed [10/13/20](#)]

Sierra Club's Jane Williams Said The EPA's Proposal Paved The Way For Industry To Continue Abandoning Polluted Sites, Calling It A "Wealth Transfer From The Polluted To The Polluter." "Environmental activists oppose the EPA plan. The agency's proposal, the Sierra Club's Williams tells C&EN, paves the way for industry to continue abandoning polluted sites, which Williams calls 'a wealth transfer from the polluted to the polluter.'" [Chemical & Engineering News, [02/24/20](#)]

Special Interests Supported The EPA's Proposal

American Chemistry Council Endorsed EPA's Proposal

American Chemistry Council Endorsed EPA's Proposal To Not Impose Additional Financial Assurance Requirements On The Chemical Manufacturing Sector. "The Agency has proposed not to impose additional financial assurance requirements on the chemical manufacturing sector, based on the Agency's sound analysis of the current market structures for the sector, the applicable modern regulatory framework, current voluntary industry practices and the fact that the sector poses a low risk of taxpayer funded cleanups. EPA's determination is well-supported and we endorse the agency's decision." [American Chemistry Council EPA Comment (PDF Download), [05/06/20](#)]

American Chemistry Council "Applauded The News" Of The EPA's Proposal. "The American Chemistry Council, the largest lobbying group of US chemical manufacturers, applauded the news. 'Federal and state programs, along with modern operating procedures, have significantly reduced the risk of taxpayer-funded cleanup efforts,' ACC says in a statement provided to C&EN. 'We're pleased that EPA does not intend to pursue duplicative new regulations that would increase costs for chemical manufacturers without environmental benefit.'" [Chemical & Engineering News, [02/24/20](#)]

A Number Of Employees Of Trump's EPA Previously Worked For American Chemistry Council

Patrick Taylor, the EPA's Deputy Assistant Administrator, was a law clerk for the American Chemistry Council from 1994 to 1996. [OpenSecrets.org, accessed [11/16/20](#)]

Liz Bowman, the EPA's former Associate Administrator of Public Affairs within its Office of the Administrator, was Director of Issue and Advocacy Communications for the American Chemistry Council from October 2012 to March 2017. [LinkedIn, accessed [11/16/20](#)]

Nancy B. Beck, the EPA's Deputy Administrator of Chemical Safety, was the Senior Director, of Regulatory Science Policy for the American Chemistry Council from 2012 to 2017. [OpenSecrets.org, accessed [11/16/20](#)]

The American Chemistry Council Spent Nearly \$35 million Lobbying The Federal Government During The Trump Administration

**During The Trump Administration, The American Chemistry Council Spent \$34,490,000
Lobbying The Federal Government, Including The EPA.** [OpenSecrets.org – Lobbying
Profile: American Chemistry Council, accessed [10/14/20](#)]